

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 Case Type: Other Civil
- - - - -

4 The State of Minnesota,
by Hubert H. Humphrey, III,
5 its Attorney General,
and

6 Blue Cross and Blue Shield
of Minnesota,

7

Plaintiffs,

8 vs.

File No. C1-94-8565

9 Philip Morris Incorporated,
R.J. Reynolds Tobacco Company,
10 Brown & Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
11 Tobacco Company, The American Tobacco
Company, Liggett Group, Inc., The Council
12 for Tobacco Research-U.S.A., Inc., and
The Tobacco Institute, Inc.,

13

Defendants.

14 - - - - -

15

16

17 DEPOSITION OF DR. HYMAN BERMAN

18 Volume II, Pages 378 - 591

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1 (The following is the continuation of the
2 deposition of DR. HYMAN BERMAN, taken pursuant to
3 Notice of Taking Deposition, at the offices of Dorsey
4 & Whitney, Pillsbury Center South, 220 South Sixth
5 Street, Minneapolis, Minnesota, commencing at
6 9:35 a.m., September 16, 1997.

7 *****

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1 I N D E X

2 THE WITNESS EXAMINED BY PAGE
3 Dr. Berman Mr. Manning 382
4

5

6 E X H I B I T I N D E X

7 EXHIBIT # PAGE MARKED DESCRIPTION
8 3139 439 10/9/62 Letter
9 Hahn to Hartnett
10 3140 442 2/4/65 Memo
11 Welch to TI
12 3141 444 Smoking and Health:
13 The Present Position in
the U.K. And How It
Came About
14 3142 470 12/11/84 Letter
Kloepfer to Humber
15 3143 479 6/10/88 Memo
16 Curry to Wold
17 3144 483 8/29/95 Letter
18 MN Wholesale Marketers
Association, Inc.
19 3145 487 January 1964
20 Proposal--Research on
Trends in Cigarette
Smoking Among Teenagers
21 3146 488 1/3/71 TI Document
22 3147 495 4/19/73 Letter
23 Galyan to Standen
24 3148 508 Acknowledgement Receipt
25 for Confidential Report

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1	3149	527	4/11/85 Memorandum Mozingo to Brozek
2			
3	3150	532	1988 MN Legislative Plan/ MN 1987 Legislative Overview
4			
5	3151	541	Camel Y&R Orientation
6	3152		(Not introduced)
7			
8	3153	550	8/25/89 Letter Spach to Jorgens
9	3154	553	5/30/90 Letter Fishel to Mayor Fraser
10			
11	3155	563	3/6/85 Memo Forsythe to Sharp
12	3156	571	2/7/74 Memo Blackmar to McReynolds
13			
14	3157	572	7/29/74 Memo Pizer to Pittman
15	3158	573	4/22/81 Memo Stebbins to Veatch
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17	3159	577	Product Movie Placement
18	3160	579	6/14/83 Letter Ripslinger to Stallone
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1 P R O C E E D I N G S

2

3 BY MR. MANNING:

4 Q. Professor Berman, you understand that you're
5 still under oath here this morning?

6 A. Yes, I do.

7 Q. And just as a matter of a few preliminary
8 questions, as we agreed yesterday, you're attempting
9 to be objective in this case; correct?

10 A. That is correct.

11 Q. And you attempt to do your exercise here within
12 the constraints of academic freedom?

13 A. Absolutely.

14 Q. And you, in that regard, attempt to perform your
15 assignment with integrity?

16 A. That's correct.

17 Q. And not to sacrifice your integrity?

18 A. That is absolutely correct.

19 Q. Or your morality?

20 A. That is correct.

21 Q. And if the question that you researched becomes
22 too narrow, you have absolutely agreed that you will
23 widen it?

24 A. Yes, I certainly would.

25 Q. And if it becomes apparent to you in the course

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1 of this deposition that it's too narrow, you will
2 widen it?

3 A. I certainly would.

4 Q. You'll announce it right here?

5 A. I would announce it right here.

6 Q. And if it becomes apparent to you after this
7 deposition that it's too narrow, you would
8 communicate that to me?

9 A. I certainly would.

10 Q. As a matter -- and you would even do that on
11 your own, against the -- I mean you would talk with
12 your lawyers, but you would, nonetheless, insist the
13 communication be made as a matter of integrity?

14 A. Yes.

15 Q. And as we also agreed, if you determine that the
16 clients who you are working for, the tobacco
17 industry, and the various tobacco groups, are lying,
18 you will withdraw from the case?

19 A. I would have to have conclusive evidence of
20 that.

21 Q. And if you do, you will withdraw?

22 A. If it's conclusive evidence beyond a shadow of a
23 doubt.

24 Q. And if you -- okay. And so --

25 A. Yes.

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1 Q. So you would need that conclusive evidence
2 beyond a shadow of a doubt?

3 A. Right.

4 Q. But if you smell it, will it -- if it smells
5 like they're lying, not conclusive, but if it smells
6 that way, will you widen the question?

7 MR. PURVIS: Object to the form.

8 BY MR. MANNING:

9 Q. And determine whether or not lying does exist
10 here and that you are in support of it? Will you do
11 that as a matter of integrity?

12 A. That is not my research design.

13 Q. I understand that. That's not my question.

14 A. No. I understand your question. I'm trying to
15 tell you what my research design was.

16 Q. I don't want to hear that any more.

17 A. All right.

18 Q. You can tell me as much as you want, but listen
19 to my question very carefully because I know what
20 your research design was.

21 My question to you is this. Please listen.

22 If you smell just a little bit that there may be
23 lying here, will you, as a matter of integrity,
24 professional academic integrity, insist that you
25 widen the question and take a broader look? Will you

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1 do that?

2 MR. PURVIS: Object to the form.

3 THE WITNESS: My question is already very, very
4 wide.

5 BY MR. MANNING:

6 Q. Will you --

7 A. Yes.

8 Q. Will you answer my question, please?

9 A. I'm answering it the way I can. And that is to
10 say that the question that I have asked of this
11 particular historical project is as wide as we can
12 possibly make it.

13 Q. That's your view. It's as wide as --

14 A. That's correct.

15 Q. Even though by your own definition it doesn't
16 include the tobacco companies at all?

17 A. No, it does include the tobacco companies.

18 Q. Pardon me?

19 A. It does include the tobacco companies. You must
20 have misunderstood me.

21 Q. It does include the tobacco companies?

22 A. It most certainly does.

23 Q. But you -- then you've included the tobacco
24 companies without looking at one tobacco document?

25 A. That is absolutely correct.

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1 Q. Without interviewing one tobacco executive?

2 A. That is absolutely correct.

3 Q. And you have found -- how does it include the
4 tobacco companies?

5 A. My project is, in fact, what do the people of
6 Minnesota and the state -- the various state agencies
7 knew -- know or knew about the health hazards of
8 smoking? When did they know it? They knew this kind
9 of information from public sources; therefore, the
10 tobacco industry public sources were taken into
11 account in my research.

12 Q. Now, but let's --

13 A. Not the private sources.

14 MR. PURVIS: Let him answer,

15 BY MR. MANNING:

16 Q. Are you finished? I'm sorry.

17 A. No.

18 Q. Okay.

19 A. The private sources were not known then, and
20 only recently have become known. Historians don't do
21 post facto analysis. And, consequently, my research
22 is as broad as it possibly can be. The public
23 sources were used.

24 Q. So in your view it includes the tobacco
25 companies' public sources, your work?

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- 1 A. That is absolutely correct.
- 2 Q. That is what you just told me; correct?
- 3 A. What appeared in the press. What appeared in
- 4 the press was, in fact, what was used -- what was
- 5 seen by the public, what was seen by the state, it
- 6 was what I used in my research.
- 7 Q. Now, what appeared in the press?
- 8 A. Yes.
- 9 Q. I'm asking you what you just told me under oath.
- 10 A. Uh-huh.
- 11 Q. What you just told me was that you included the
- 12 tobacco companies' public sources.
- 13 A. Public sources as I were able to find them.
- 14 Yes, sir.
- 15 Q. Now list for me right now in your report on page
- 16 one through thirty-seven in the attachments that
- 17 lists everything in your six file drawers -- list for
- 18 me what of those items are tobacco company public
- 19 sources. List them for me right now. Take your
- 20 time, go through them.
- 21 A. Whatever -- I can't -- I can't and I won't.
- 22 Q. No, no, no, no. Don't tell me you won't.
- 23 MR. PURVIS: Object. Let him finish his
- 24 answer.
- 25 THE WITNESS: Let me finish my sentence,

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1 please.

2 BY MR. MANNING:

3 Q. Go ahead.

4 A. What I have used was tobacco industry public
5 sources as it appeared in the public press. And,
6 therefore, you will find references in the Tribune,
7 the -- whatever public press there is. And I've used
8 that in the consideration of my work, sir.

9 Q. And I'm -- we can stay here.

10 A. Yes.

11 Q. Point to me --

12 Let me make very clear to you -- don't tell me
13 you won't do anything. Because you can't do that.

14 MR. PURVIS: I object to this attitude. You pay
15 this witness respect. You've been threatening him
16 and you are lecturing him. You have not given him
17 the respect that is accorded to a witness in these
18 proceedings. You've interrupted him and we're not
19 going to let this go on. I let you do it yesterday.
20 It's not going to happen today.

21 BY MR. MANNING:

22 Q. Point to me, sir, one item on page one through
23 thirty-seven that is a tobacco company public
24 source. Point it out to me.

25 A. Minneapolis Tribune 1994. Unlimited articles

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1 listed below.

2 Q. What page are you on, sir?

3 A. Page eighteen, which gives me a blanket

4 statement regarding that.

5 Q. Let me find where you're pointing.

6 A. Page eighteen, bottom of the page.

7 Q. You pointed to which -- let me hear what you

8 said. Which one, please?

9 A. I said page eighteen, Minneapolis Tribune, we

10 went through the whole thing, from 1994, which

11 included statements --

12 Q. I'm asking which one you're pointing out to me,

13 sir. All of the articles?

14 A. Sorry?

15 Q. What are you pointing to here?

16 A. I'm pointing to -- on page eighteen.

17 Q. Yes, sir.

18 A. Minneapolis Tribune, 1994. Including, but not

19 limited to the articles listed below. And now let me

20 look at the articles listed below.

21 (Reviewing document.)

22 Minneapolis Tribune, March 27, 1953, "Tobacco

23 Men Fight Tax Cut. " That's one.

24 Q. Which item was that, sir?

25 A. Item -- that's on page twenty-one.

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1 Minneapolis -- March 27, 1953. "Tobacco Men Fight
2 Tax Cut."
3 Q. Okay. That's the first one you've pointed out
4 to me?
5 A. That's the first one I've seen. But there may
6 be others. Remember, this is only representative
7 examples.
8 Q. You point every one of them out to me --
9 A. I'll --
10 Q. And then I will go back and question you about
11 each one. Take as long as you want.
12 A. I would have to review them before -- if you're
13 going to question me about them.
14 Q. Let me explain to you the question, sir.
15 A. Yes, sir.
16 Q. Don't argue with me. Let me finish my
17 question.
18 A. Yes, sir.
19 Q. Continue to point out, on anywhere, page one
20 through thirty-seven, any item that is, as you have
21 told me under oath, a tobacco company public source
22 that you relied on. Continue to tell me. I've noted
23 the first one.
24 A. Okay. Minneapolis Tribune, January 1, 1954.
25 "Tobacco Industry Joint Plan Vetoed."

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1 Q. Thank you.

2 A. January 4, 1954, "A Frank Statement to Cigarette
3 Smokers."

4 Q. Thank you.

5 A. January 4, 1954, "Tobacco Group to Study
6 Cancer."

7 Q. Thank you.

8 A. October 20, 1954, "Tobacco Industry Opens Study
9 of Product's Effects."

10 Q. Okay.

11 A. We were -- we jumped between -- from '54 to --
12 quite a bit here because we were still working on the
13 indexing of this material. So I can't tell you what
14 was in here between '54, except for the few items
15 there.

16 But let's go on to '64. Again, '64 was spotty,
17 although we have a lot of material there with the
18 surgeon general's report and stuff like that.

19 In terms of the bibliography spotty.

20 Now we jump for -- now it's -- now the
21 New York Times. If I'm not mistaken, the December 6,
22 1959 article of the New York Times, "Science in
23 Review: Controversy on Lung Cancer and Smoking
24 Flares Up Again Over the Statistics," does include
25 tobacco-industry material.

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1 January 19, 1960, New York Times, "Emphasis
2 Disputed in Cancer Findings," includes
3 tobacco-industry material.

4 September 8, 1961, New York Times, "Smoking
5 Doubted as Cancer Cause," includes tobacco-industry
6 material.

7 St. Paul Pioneer Press, January 4, 1954,
8 "Cigaret Firms Study Fag-Cancer Rumor."

9 Q. I'm sorry, what page?

10 A. Page thirty.

11 Q. Thank you.

12 A. St. Paul Pioneer Press.

13 Q. Which one?

14 A. Associated Press report.

15 Q. Okay.

16 A. January 4, 1954.

17 Q. Thank you.

18 A. If I'm not mistaken, the Minneapolis Star,
19 Associated Press, page thirty-one, "Low-tar
20 Cigarettes Safer, Study Shows," September 15, 1976,
21 comes from industry sources.

22 U.S. News & World Report, John Heller, article,
23 "The Truth About Smoking and Lung Cancer," July 26,
24 1957, includes tobacco-industry material, I believe.

25 I think -- go back and look at the beginning. I

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1 didn't look at the beginning. Let's start.

2 CBS News, "Cigarettes and Lung Cancer," did have
3 industry spokesmen on it.

4 CBS News, "On Smoking and Health," '64, had
5 industry spokesmen on it.

6 CBS News -- no, strike that.

7 CBS News, "See It Now," 1965, had industry
8 spokesmen on it.

9 The clips of CBS News, 1957 to '59, had industry
10 spokesmen periodically on it.

11 Q. I'm sorry, which one was that one?

12 A. Sorry?

13 Q. When you say "the clips" I'm not following.

14 A. CBS News' news clips came from Vanderbilt
15 archives.

16 Q. Where is that listed?

17 A. One, two, three -- fourth from the bottom,
18 "Stories on Smoking."

19 Q. Thank you.

20 A. Uh-huh.

21 Q. Go ahead.

22 Are you marking these, sir, so you can refer
23 back to them?

24 A. No, I haven't. I've just been going through
25 them as quickly as I possibly can.

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1 Q. Just put a little mark next to the one. But
2 I've got them all marked and numbered, so I'll bring
3 them back to you.

4 A. Okay.

5 Billy Yeargin, page fourteen, "The Anti-Smoking
6 Campaign Failed, But Did Some Damage," Tobacco
7 International, March 21, 1980.

8 Q. I'm sorry, where was that on the page, please?
9 Fourteen you say?

10 A. Third from the top. Page fourteen, fourth from
11 the top.

12 Q. Thank you. Got it. Okay. Thank you.
13 Go ahead.

14 A. If I'm not mistaken, Tobacco Leaf is an industry
15 publication. And "Some Day We'll Do It: That is,
16 Make an Organized Effort to Have Cigars Featured by
17 Screen and Radio," Tobacco Leaf, September 29, 1934.
18 See that?

19 Q. Yes. That's tobacco-company public source?

20 A. Yes.

21 Q. Thank you.

22 A. "Smoking an Aid, Rather than Injury to
23 Soldiers," Tobacco News, June 13, 1918.

24 Q. Another tobacco-company source?

25 A. Tobacco-company source.

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1 "Tobacco Stimulates Mental Activity," Canadian
2 Cigarette and Tobacco Journal, October 1918.

3 "Army 95 Percent Users of Tobacco:
4 Quartermaster General's Report Reveals Also That It
5 Was Deemed Almost a Necessity for the Welfare of
6 Men," Tobacco Leaf, September 26, 1918.

7 "A Philip Morris Executive Assays the
8 Battleground," Tobacco Journal, March 10, 1977.

9 Q. Tobacco-company source?

10 A. Tobacco-company source.

11 Q. Thank you.

12 A. Sorry. I forgot.

13 I am not sure of this, but the Association Forum
14 on page fifteen, sixth from the top, "The Right to
15 Smoke," November/December 1963, I think that's an
16 industry source.

17 Q. Okay.

18 A. Although not an industry source, the Columbia
19 Journalism Review, Summer of 1963, third from the
20 bottom on page fifteen, "Smoking and News: Coverage
21 of a Decade of Controversy," in which industry
22 spokesmen are cited, I believe.

23 Q. Okay.

24 A. April 1954 Cosmopolitan Magazine, again, this
25 is -- I think, page sixteen, cigarettes -- rather,

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1 Bob Considint, "To Smoke or Not to Smoke," does
2 include industry statements or industry attitudes.

3 Q. Thank you.

4 A. The Duluth News Tribune, page sixteen, second
5 from the bottom, "Health Experts Undecided on
6 Filtered Cigaretts," July 24, 1957, includes industry
7 statements.

8 Q. Thank you.

9 A. Again, this is -- I don't remember every one of
10 these items so, therefore, it is my reasonable guess
11 that the Duluth News Tribune, February 11, 1990, top
12 of page seventeen, "Faction Claims Cigarette Machines
13 Don't Smoke, People Do," has industry materials in
14 it.

15 Q. Thank you.

16 A. Fortune Magazine, December 1953, "The Uproar in
17 Cigarettes."

18 Fortune Magazine, January 1963, "Embattled
19 Tobacco's New Strategy."

20 Fortune Magazine, November 1967, Gene Bylinsky,
21 "The Search for a Safer Cigarette."

22 Q. Thank you.

23 A. Life magazine, December 21, 1953, "Smoke Gets in
24 the News," does have industry statements, I believe.

25 Literary Digest, January 15, 1916, top of page

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1 eighteen, "Anti-tobacco Exaggerations," do have
2 industry statements and attitudes.

3 Q. Sure.

4 A. Literary Digest, July 15, 1919, "Must Lady
5 Nicotine Follow John Barleycorn?" There's an
6 industry statement.

7 Q. Good.

8 A. I think this is where we -- I'm not sure. Let
9 me just -- yes. 1909 forward.

10 Q. Uh-huh. Okay, sir.

11 A. Just to be sure.

12 Yes.

13 Q. Now, sir, when I counted -- and I numbered them
14 as you listed them, was that you are indicating to
15 me, or to this record, that there are thirty-two
16 sources that you've identified on pages one through
17 thirty-seven, of the materials that you put in your
18 report that are the basis of your report, that in
19 these sources are tobacco companies' public
20 statements and the public sources that you
21 considered?

22 A. Among others.

23 Q. But these, at least, are the ones in your pages
24 one through thirty-seven that you can identify right
25 now? We've taken twenty minutes or a half hour to do

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1 it; correct?

2 A. That's correct.

3 Q. You've had all the time you've wanted?

4 A. That's correct.

5 Q. And you've identified these thirty-two --

6 whatever they are, articles, we'll come back and talk

7 about them, characterize them, --

8 A. Uh-huh.

9 Q. -- as the public sources that you, as an

10 academic of integrity, took into account in

11 formulating your opinion; correct?

12 A. That is correct.

13 Q. And it was because you took into account the

14 public statements of the tobacco industry, in these

15 thirty-two sources, that you claim that there's some

16 objectivity in your report?

17 A. There is complete objectivity in my report.

18 Q. Yes, sir.

19 A. Not some, but complete.

20 Q. And the reason that there is complete

21 objectivity is that you also -- one of the reasons

22 there is complete objectivity is that you considered

23 the views of the tobacco companies in their public

24 sources; correct?

25 A. That is partly correct. Among other things,

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1 yes. I concluded that as the total package of
2 information that was before me and evidence that was
3 before me, yes, sir.

4 Q. Now, of these thirty-two -- well, did you
5 include anything else that you can remember, as you
6 sit here right now, as the tobacco company public
7 sources, other than the thirty-two articles you've
8 identified?

9 A. Yes. There are other articles which have not
10 appeared in the bibliography, but I cannot recall
11 them offhand.

12 Q. Similar to the ones --

13 A. Similar to the ones dealing with responses of
14 the industry towards certain events or certain things
15 that came up during the course of news-making events.

16 Q. Are there any other public sources, then? Other
17 than the ones here and the ones that aren't listed
18 that are similar to what's here? That you took into
19 account?

20 A. If I'm not mistaken, I had seen whatever public
21 advertisements that industry sources put out through
22 the years.

23 Q. Sure. Anything else?

24 A. That's -- that is about it. I think. There may
25 be others, but that's what I can recall at the

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1 present time, yes.

2 Q. Now you did not review annual reports of tobacco
3 companies?

4 A. No.

5 Q. You did not review any public reports that are
6 available from the Council for Tobacco Research or
7 the Tobacco Institute?

8 A. No.

9 Q. You didn't look for those materials in the
10 course --

11 A. No, I did not.

12 Q. -- course of your historical research?

13 A. No.

14 Q. Now, -- and you, of course, are aware that these
15 are public companies and those are public documents
16 and they're publicly available?

17 A. Yes, I know that.

18 Q. You know how to get those as a historian?

19 A. Yes, I do.

20 Q. You chose not to?

21 A. I chose not to.

22 Q. Now, would you agree that most of the articles
23 that you cited in here -- and I'm happy to go through
24 them, and count them, and show them to you again, and
25 I'm only giving this by way of estimates. That most

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1 of the articles, not all, but most of the articles of
2 the thirty-two you cited to me, are pre-1955; in
3 other words, of the thirty-two, approximately twenty
4 of them, at least --

5 A. Probably true.

6 Q. -- are pre-1955?

7 A. Yes, I think -- you've estimated that, I think,
8 accurately.

9 Q. Right. I mean if we both took the time to count
10 it might be twenty-four?

11 A. Whatever.

12 Q. It might be eighteen? And that's why we're
13 saying an estimate?

14 A. I'll go along with that, yes, sir.

15 Q. Now, would you also agree that of the
16 thirty-two, almost all are press accounts, either
17 newspapers or magazines?

18 A. That is correct.

19 Q. And would you also agree that the material, as
20 you reviewed it, the public statements, in these
21 thirty-two press accounts, newspapers, and magazines,
22 of the tobacco companies, was a denial of any harmful
23 effects of tobacco?

24 A. Early denial. Later -- what should we say,
25 vacillation.

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1 Q. Equivocation?

2 A. Equivocation.

3 Q. So early statements of the thirty-two, we agreed
4 that approximately twenty are pre-'55, those are
5 denial?

6 A. Yes, sir.

7 Q. After '55 there's equivocation?

8 A. Equivocation.

9 Q. By equivocation we mean that denial continues,
10 but the word maybe is kind of in there, to your
11 perception?

12 A. Yes.

13 Q. But never is there an admission in these public
14 materials that you reviewed, by the tobacco industry,
15 that their products cause cancer; correct?

16 A. That is correct.

17 Q. Or that they are addictive?

18 A. That is correct.

19 Q. And so you took the tobacco companies at their
20 word when you reviewed these materials?

21 A. I took the tobacco companies not at their word,
22 but I took the tobacco companies -- what they stated
23 there, looking at it -- seeing how the people
24 perceived that, factored that in.

25 Q. You factored in how the people perceived what

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1 the tobacco companies were saying?

2 A. That is correct.

3 Q. And was your perception -- did you ever conclude
4 that what the peoples' perception of what the tobacco
5 companies were saying, was a baldfaced lie?

6 A. I'm part of the people and I lived through that
7 time. And I certainly felt that it was equivocation
8 at best; a lie, if you wish. Yes.

9 Q. So you felt that when you lived through the
10 time?

11 A. That's correct.

12 Q. And you also felt that when you look back and
13 looked at these materials, --

14 A. That is correct.

15 Q. -- that at best it was an equivocation, but in
16 fact, some people would be legitimate in interpreting
17 this as a lie?

18 A. That is correct.

19 Q. Now, you also, I take it, found that some people
20 would take the tobacco companies at their word? Not
21 all people would interpret them as liars?

22 A. I would assume so.

23 Q. And you were not able to do any breakdown as to
24 the people of America, or Minnesota, as to what
25 numbers thought they were liars and what numbers took

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1 heart in what they were saying as an incentive to
2 allow them to keep smoking?

3 A. Not directly, no, sir.

4 Q. In the course of your review on the question
5 that you've articulated, as we were talking earlier,
6 if in fact you determined, as we talked about, that
7 your clients, the people who are putting money in
8 your pocket, are lying, as you suspected and believed
9 that they were when you read these materials, when
10 you were a --

11 A. Uh-huh.

12 Q. -- person living through these times, you would
13 have the integrity to withdraw from this case and
14 stand up and say, as we talked about, that they're
15 lying; correct?

16 MR. PURVIS: Object to the form of the question

17 THE WITNESS: I'll refuse to answer that
18 question.

19 BY MR. MANNING:

20 Q. You refuse to answer that question?

21 A. Yes, sir. Because I think that's a loaded
22 question and it has a bearing on something that
23 had -- that tries to make a historical judgment lead
24 to a present action. And that I think is not what
25 historians do. And that is not what I will do.

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1 Q. Let me talk to you about it for a moment,
2 historically; okay?

3 A. Uh-huh.

4 Q. You told me that when you read it, you thought
5 they were lying.

6 A. Yes.

7 Q. And when you read these public -- thirty-two
8 public statements, in looking back on them, when they
9 made them, you remembered that they were lying and
10 you determined when you read them that they were
11 either a lie or equivocation?

12 A. That is correct.

13 Q. Depending on the timing of it?

14 A. Yes.

15 Q. And these thirty-two sources, as you've
16 acknowledged, are the public sources of the tobacco
17 companies that you relied on for your historical
18 opinion?

19 A. That is correct.

20 Q. That you're offering in this case about the
21 knowledge of the people of Minnesota?

22 A. That is correct.

23 Q. Thank you.

24 So if in fact in your historical analysis, not
25 as an individual, but as a historian, you determined

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1 that there were lies occurring, minimum pre-'55, and
2 afterwards equivocation, then did you consider --
3 have you considered that the rendering of your
4 opinion with respect to knowledge of the State of
5 Minnesota, the governor, the people, Department of
6 Health, Department of Education, the knowledge that
7 they may have had, that you've rendered an opinion
8 on, is based on lies?

9 A. The industry was not perceived as a credible
10 source by the public.

11 Q. Would you agree with me that nowhere in your
12 report, anywhere in your forty-seven page report, do
13 you tell the jury, the judge, and the people of
14 Minnesota, that you personally, and you as a
15 historian, determined that these tobacco companies
16 were lying? You didn't do that, did you?

17 MR. PURVIS: Object to the form.

18 BY MR. MANNING:

19 Q. You didn't do that?

20 A. That was not my purpose.

21 Q. That wasn't your purpose?

22 A. Correct.

23 Q. We've established that here.

24 A. That was not my purpose.

25 Q. I understand that wasn't your purpose.

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1 A. I mean that may be your purpose, but it's not
2 mine.

3 Q. Sir, you understand that your lawyers spoke to
4 you that you were going to come here for purposes of
5 cross-examination?

6 A. I certainly do. I understand that. Yes.

7 Q. Thank you.

8 Now, if you determined from sources that aren't
9 public, sources that I show you, --

10 A. Yes.

11 Q. -- that confirm in your mind -- confirm that, in
12 fact, the tobacco companies are lying, will you stand
13 up and have the integrity to withdraw from this
14 case?

15 MR. PURVIS: Object to the form of the question.

16 BY MR. MANNING:

17 Q. Will you?

18 A. That is not my purpose here. My purpose is to
19 do a historical research of a particular kind, in
20 which the industry lying has little if any bearing on
21 what I do.

22 Q. What I am talking to you about is your
23 credentials and background and academic integrity.

24 A. That's correct.

25 Q. That's what I'm talking about.

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1 A. Yes, please do.

2 Q. I understand your purpose, believe me. I've
3 read your report and I understand the purpose of your
4 opinion?

5 A. Uh-huh.

6 Q. What I'm asking you, as an expert, attempting to
7 offer an opinion in a court of law, that if in the
8 next few hours, as I show you documents, as I did
9 yesterday, that in your mind, as a historian, as you
10 read those documents, and analyze them, as you're
11 capable of doing, as you've done, if these tobacco
12 company documents that aren't private -- that aren't
13 public, but are quote, private, may become public,
14 but right now are private, if they confirm in your
15 mind what you already know, is that the tobacco
16 companies were lying, and doing it in an orchestrated
17 way, to influence public opinion, public perception,
18 will you have the integrity to withdraw?

19 MR. PURVIS: Object to the form.

20 THE WITNESS: That was not what I was designed
21 to do.

22 First of all, let me say that --

23 BY MR. MANNING:

24 Q. Let --

25 MR. PURVIS: Let him finish.

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1 THE WITNESS: What the tobacco industry did
2 internally among themselves, with its lawyers, have
3 no bearing on the research question that I asked.

4 The internal operations of the tobacco industry
5 are of no concern to me. Their documents -- as a
6 historian. In this particular instance.

7 They -- the internal documentation that you will
8 show me are irrelevant to my particular research
9 question.

10 BY MR. MANNING:

11 Q. Now let me, sir, repeat the exact question.

12 A. Yes, sir.

13 Q. I'm not going to argue with you. Your lawyer
14 may object, which he's welcome to do. I respectfully
15 disagree that you answered my question.

16 Respectfully, so I'm going to ask it again.

17 A. All right.

18 Q. Okay. I'm not asking you at all about the
19 narrowness of your research, the --

20 A. I say broadness. Please, sir.

21 Q. Narrowness --

22 A. I say broadness.

23 Q. Broadness, however you want to characterize it.

24 A. I let you get away with narrowness yesterday,
25 but I will not any longer.

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1 Q. Okay. No problem, sir.

2 I'm going to re-ask the question. And the
3 question ends with asking about will you have the
4 integrity to withdraw. And that's the question I
5 want you to answer.

6 A. I have integrity and my integrity has never been
7 challenged. And the fact of the matter is that
8 whatever the tobacco industry did or did not do has
9 no bearing on my integrity, sir.

10 Q. I'd like to re-ask the question that I asked.
11 Please listen to the question and answer it.

12 A. Yes, sir.

13 (Record read.)

14 THE WITNESS: The answer is no. And it's not a
15 question of integrity, it's a question of what my
16 research design is. I'll define my integrity, sir.

17 And for fifty years I've been working in this
18 field. For forty years here at the State of
19 Minnesota. No one has ever questioned my integrity,
20 sir, and I hope that you won't either.

21 BY MR. MANNING:

22 Q. In fifty years you've never been paid by the
23 tobacco companies; correct?

24 A. That is correct.

25 Q. You are being now, correct?

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1 A. I'm being paid by the tobacco companies through
2 the various law firms, yes, sir.

3 Q. Correct. In your fifty years in Minnesota
4 you've never been paid by tobacco companies, have
5 you?

6 A. That's correct.

7 Q. You've been predominantly paid by the
8 University of Minnesota?

9 A. That's correct.

10 Q. And predominantly paid by labor unions; correct?

11 A. No. Not by labor unions.

12 Q. By who, besides the University of Minnesota?

13 A. I've had research grants from the Minnesota
14 Historical Society. I've had research grants from
15 the -- from the Bicentennial Commission. I've had
16 research grants from various groups like that.

17 Q. Predominantly --

18 A. And in terms of consulting, I've consulted with
19 some law firms.

20 Q. Predominantly public institutions that you've
21 received your compensation from?

22 A. That is correct.

23 Q. And in the legal matters that you were involved
24 in, that you talked to me about yesterday, they
25 involved labor matters?

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- 1 A. That is correct.
- 2 Q. And you were on the side of labor?
- 3 A. That is correct.
- 4 Q. And you were paid by the side of labor, correct?
- 5 A. Yes.
- 6 Q. So this is the first time in your career, as you
- 7 can recall, that you have testified, or been paid by
- 8 tobacco -- for -- paid by the tobacco companies?
- 9 A. This is the first time, yes, sir.
- 10 Q. Now, in addition, sir, if when I show you
- 11 documents -- and I've shown you a few of them
- 12 already, --
- 13 A. Uh-huh.
- 14 Q. -- you see documents that reflect a clear
- 15 pattern of tobacco companies targeting kids, going
- 16 after teenagers, to get them addicted to smoking,
- 17 that reflects a willful pattern on their part, in
- 18 that regard, will you, sir, withdraw as an expert?
- 19 A. No, sir.
- 20 Q. So if that --
- 21 A. For the same reason I gave before.
- 22 Q. I understand.
- 23 Now, you have seen in the course of your
- 24 research public statements by tobacco companies that
- 25 they are not interested in kids and that they don't

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1 target them; correct? You've seen that?

2 A. I've seen such statements, yes, sir.

3 Q. And the only things that you've seen to

4 contradict that so far are a few documents I showed

5 you yesterday; correct?

6 A. That is correct.

7 Q. The other things you've seen to contradict that

8 are the amended complaint that makes allegations,

9 quotes from internal documents, that says that that's

10 not true, it says that they in fact do target kids;

11 correct?

12 A. That is correct.

13 Q. And, of course, the Richard Kluger book that

14 laid out in some detail in its chapters -- a chapter,

15 and then touched on in other chapters, in detail that

16 in fact they do do this?

17 A. I've read that, yes, sir.

18 Q. You have read that?

19 A. Yes, sir.

20 Q. And in spite of reading that book prior to being

21 involved in this case, in spite of reading the

22 amended complaint which makes allegations that they

23 go after the kids, and in spite of seeing just the

24 few documents that you saw yesterday that supported

25 that -- that you've indicated to me reflect that they

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1 do go after kids, what you're telling me is that you
2 will ignore that issue because you're testifying
3 about something else; is that right?

4 A. That is absolutely correct. That is what I'm
5 saying.

6 Q. And you feel that it is fundamentally sound and
7 principled for you, as a free academician, to ignore
8 an issue like targeting kids, and testify, as you're
9 doing here, on behalf of the tobacco companies, with
10 money going into your pocket being paid by the
11 tobacco companies; correct?

12 MR. PURVIS: Object to the form.

13 THE WITNESS: I would -- will you please repeat
14 that question?

15 MR. MANNING: Sure.

16 THE WITNESS: That was a long and involved
17 question and I want to be sure I know what you're
18 saying.

19 MR. MANNING: And if it's unclear in any way,
20 you can tell me to re-ask it and I'll do so.

21 THE WITNESS: Please.

22 MR. MANNING: We'll have the reporter re-ask it.
23 If it's unclear, please tell me.

24 (Record read.)

25 THE WITNESS: That's a loaded question. That's

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1 full of value judgments, full of conclusions. And I
2 cannot answer it.

3 BY MR. MANNING:

4 Q. Why can't you answer the question, sir?

5 A. If you will rephrase the question, without using
6 value judgments and characterizations, I may be able
7 to answer it.

8 Q. Okay.

9 MR. MANNING: I would ask that counsel instruct
10 the witness to answer the question. Value judgments
11 are not a legitimate basis for any objection. He
12 understands the question. He's indicated that. And
13 he's a very bright man. What he's indicated is that
14 he's refusing to because of the value judgments.

15 I ask you, so I don't have to go to court, to
16 instruct the witness to answer the question, as you
17 know is proper under the rules.

18 MR. PURVIS: I will not so instruct him. And I
19 think what the witness is telling you is that he does
20 not understand the question.

21 THE WITNESS: I do not understand the question,
22 sir.

23 BY MR. MANNING:

24 Q. That's not what you told me just a moment ago.

25 A. Oh, I told you why I didn't understand the

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1 question. Because it was loaded. And I'd like to
2 get a straight question from you, which I'll be able
3 to answer. I'll be happy to answer.

4 Q. Great. Let's go through what you understand and
5 what you don't slowly, okay?

6 You understand targeting kids, what I mean by
7 that?

8 A. I certainly do.

9 Q. You understand tobacco companies have denied
10 that publicly, you've seen that?

11 A. I've seen that, yes, sir.

12 Q. You've told me that?

13 A. I've told you that.

14 Q. Now, what I'm saying -- asking you, sir, is that
15 if in fact more evidence comes out than what you've
16 already read, about the tobacco companies targeting
17 kids, you feel, as an academician, that it is
18 acceptable for you, as a free academic of integrity,
19 to ignore that issue and testify about something
20 else; is that right?

21 MR. PURVIS: Object to the form.

22 THE WITNESS: In one word, yes.

23 BY MR. MANNING:

24 Q. Thank you.

25 A. Okay?

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1 In one word, yes. Okay.

2 Q. Now, in addition, when you got on the Internet
3 that time, and you found this book, a description of
4 the book called "The Cigarette Papers," do you
5 remember that?

6 A. I do.

7 Q. And do you remember that it was written by
8 Stanton Glantz, John Slade, Lisa Bero, Peter Hanauer
9 and Deborah Barnes?

10 A. I don't recall the authors.

11 Q. Do you remember that there was a forward by
12 C. Everett Koop in it?

13 A. It's possible that that was -- that was on the
14 Internet. I don't recall.

15 MR. PURVIS: Just a minute. I'm going to object
16 to any reference to a book that you have not put on
17 your predesignation list. The order is very clear
18 that you may not even refer to such a book.

19 MR. MANNING: That's absurd.

20 MR. PURVIS: I'm handing you the order. And, in
21 fact, I'll read it to you. It says, "No later than
22 five business days before the date of the deposition
23 the party noticing the deposition shall serve on the
24 opposing party a list of all documents with which
25 that party, or any other party aligned with that

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1 party, then intends to show the witness, mark as an
2 exhibit at the deposition, or otherwise refer to at
3 the deposition."

4 You are referring to a book that has not been
5 predesignated and it's improper examination.

6 MR. MANNING: Do you want to call the judge?

7 MR. PURVIS: Sure.

8 MR. MANNING: Let's call him.

9 MR. PURVIS: It's in the order.

10 MR. MANNING: I want to make the record real
11 clear before I call the judge, so we're clear.

12 This witness has indicated that he got on the
13 Internet and reviewed, not the book, but many
14 statements about the book, excerpts, et cetera. He
15 indicated that yesterday.

16 Now I could hardly designate that book in
17 advance because I did not know that he had done
18 that. I have not marked the book, nor have I put the
19 book in front of him.

20 I have the book in the room and I intend to
21 explore the level of this witness's memory with
22 respect to the topics of the book and what he chose
23 not to read. And I am more than happy to have a call
24 with the Court to discuss this.

25 MR. PURVIS: The record will clearly reflect

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1 that yesterday you raised the topic of this book.
2 You referred to it improperly at that time and now
3 you're trying to refer to it again in more detail,
4 which is contrary to the order that I just read to
5 you.

6 MR. MANNING: I didn't refer to it improperly.
7 I asked him what he reviewed. He told me it was page
8 one through thirty-seven. I referred to other
9 sources and shockingly, major sources of information
10 he acknowledged being aware of, but did not put in
11 his report.

12 So I'm more than happy to take it up with the
13 Court and I'd be happy to do so right now. So -- I
14 don't know the Court's number. I'll need to take a
15 break and call back to my office and then I'll be
16 prepared to call the Court.

17 (Recess taken.)

18 MR. PURVIS: For the record, the defense counsel
19 have conferred. We believe our position is well
20 taken on this point, pursuant to the order; however,
21 in the interest of accommodating plaintiffs' counsel,
22 we will reserve the objection and allow counsel to
23 proceed.

24 MR. MANNING: And I won't waste any more time on
25 the record by way of a response. The objection is

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1 reserved, so any response to it I will do at a later
2 time and develop it in more detail as to what's in
3 the record and what's outside the record. But I
4 appreciate that, counsel, and I'll move on.

5 BY MR. MANNING:

6 Q. Sir, when you were on the Internet, you didn't
7 take this -- when you were looking at this book, "The
8 Cigarette Papers," or a description of it on the
9 Internet, you didn't print it out?

10 A. No, sir.

11 Q. You were just looking at it on your screen?

12 A. That is correct, sir.

13 Q. Did you do a search, cigarettes, cigarette
14 documents? How did you find this on the Internet?

15 A. I really don't -- yes. I do recall now. There
16 was under either the CNN -- CNN com a statement of
17 tobacco-related articles or whatever.

18 Tobacco-related things. I punched that.

19 Q. And this --

20 A. And, among other things, this came up.

21 Q. Do you recall any of the other things that came
22 up besides this?

23 A. No, I don't, offhand.

24 Q. Did tobacco company documents themselves come
25 up?

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- 1 A. No, sir.
- 2 Q. Did you --
- 3 A. At least they didn't come up in that initial
- 4 push of the mouse button.
- 5 Q. Do you recall having access, if you had gone a
- 6 little further, there was a description that in fact
- 7 you could have gone further and in fact seen actual
- 8 tobacco company documents?
- 9 A. Yes, sir.
- 10 Q. You saw that that was possible?
- 11 A. That was possible.
- 12 Q. And you chose not to do that?
- 13 A. I chose not to do so.
- 14 Q. You reviewed all these press articles, on pages
- 15 one through thirty-seven, and other things listed
- 16 here, but even though you had tobacco company
- 17 documents available to you by a click of the mouse,
- 18 you didn't look at them?
- 19 A. That is correct.
- 20 Q. You did look at this book, "The Cigarette
- 21 Papers"?
- 22 A. I did not look at the book.
- 23 Q. You looked at excerpts, a description of it?
- 24 A. I looked at the description of it in terms of
- 25 what it included, yes, sir.

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1 Q. Okay. And is, in part, what you saw, see if
2 this refreshes your memory, this: "On May 12, 1994, a
3 package containing four thousand pages of secret
4 internal tobacco industry documents arrived at the
5 office of Professor Stanton Glantz at the University
6 of California, San Francisco. The anonymous
7 source of these, quote, cigarette papers, unquote,
8 was identified in the return address only as
9 'Mr. Butts'--presumably a reference to the
10 Doonesbury cartoon character. These documents
11 provide a shocking inside account of the activities
12 of one tobacco company, Brown & Williamson, and its
13 multinational parent, British American Tobacco, over
14 more than thirty years. Since their disclosure they
15 have been the subject of headlines around the world.
16 They are also reported" -- "...they are also reported
17 to have influenced President Clinton's decision to
18 direct the Food and Drug Administration to regulate
19 cigarettes as a nicotine delivery device."

20 Is that, in part, some of the things you read?

21 A. I don't recall whether I read that particular
22 statement on that -- at that particular time. But
23 the content of what you read me I have learned either
24 through that source or through some other readings.

25 Q. What other readings have you learned that --

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- 1 A. Newspaper accounts.
- 2 Q. Newspaper accounts of this book?
- 3 A. That is correct, yes.
- 4 Q. What newspaper accounts?
- 5 A. New York Times, I assume.
- 6 Q. They're not, per se, listed here?
- 7 A. No. Post 1995 books. That stuff is not listed
- 8 here.
- 9 Q. Okay. So you knew then, from whatever source it
- 10 was, that documents or excerpts, at least, of
- 11 documents contained in this book, were things that
- 12 had influenced President Clinton's --
- 13 A. Yes, sir.
- 14 Q. -- decision to direct the FDA to regulate
- 15 cigarettes as a nicotine delivery device?
- 16 A. I don't recall if I knew that specific thing.
- 17 But I do recall seeing that it had some influence,
- 18 yes, sir.
- 19 Q. Okay. Do you recall seeing that, "Now 'The
- 20 Cigarette Papers,'" this book, "...provides the
- 21 definitive examination of these striking documents,
- 22 combined with other material subpoenaed by Congress
- 23 and obtained by Professor Glantz. Quoting
- 24 extensively from the papers and adding needed
- 25 background and context, this book offers a keyhole

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1 view of the tobacco industry promising to
2 fundamentally change the public's perception of the
3 industry, of tobacco litigation, and of public policy
4 making"; did you see that?

5 A. I don't recall seeing that, no, sir.

6 Q. Do you recall seeing something to that effect?

7 A. Something to that effect, perhaps.

8 Q. But you knew that this book was, in fact, going
9 to -- was claimed to have the potential of
10 fundamentally impacting public's perception of the
11 tobacco industry?

12 A. I don't know if I knew that from that Internet
13 encounter, or it came to my attention through other
14 sources.

15 Q. But you knew that?

16 A. Yes, sir.

17 Q. And one of the things that you've been
18 interested in and concerned with, as a historian, is
19 the public's perception?

20 A. That is correct.

21 Q. That is what you are attempting to offer
22 opinions on?

23 A. That is correct.

24 Q. And so this -- this landmark-sort-of-event of
25 the publication of this book, and its ability and the

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1 content -- the ability of its contents to influence
2 public perception, you are aware of, but once again
3 chose not to read?

4 A. That is correct.

5 Q. Did you know that the book was written by
6 experts with the scientific and legal knowledge to
7 understand the meaning of the documents and explain
8 their importance?

9 A. No.

10 Q. Did you know and see that it was claimed that in
11 this book that it showed that the tobacco industry's
12 conduct has been more cynical and devious than even
13 its harshest critics had suspected? Did you read
14 something to that effect?

15 A. I may have seen something to that effect, yes.

16 Q. Did you see that what was claimed by these
17 papers, that for more than three decades the industry
18 had internally acknowledged that smoking is addictive
19 and that use of tobacco products causes disease and
20 death, and despite this acknowledgment, based on the
21 industry's own internal and contract research, the
22 industry has engaged in a variety of tactics to deny
23 its own findings and to convince the public that
24 there is still doubt about the harmful effects of
25 tobacco or that the effects have been exaggerated.

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1 You knew --

2 A. I'm not sure whether I saw that in this
3 connection, but that general kind of theme runs
4 through the literature and the news accounts and the
5 public accounts of the last couple of years, yes,
6 sir.

7 Q. And even though you may intend to do more
8 reading to attempt to add to your opinion, as you
9 described to me yesterday, you still have no
10 intention of reading tobacco company documents?

11 A. That is absolutely correct.

12 Q. You have no intention of asking these lawyers
13 for the real documents, so you wouldn't have to rely
14 on books like "The Cigarette Papers" or "From Ashes
15 to Ashes"?

16 MR. PURVIS: Object to the form.

17 BY MR. MANNING:

18 Q. Correct?

19 A. No, I will not.

20 Q. You, sir, believe that as -- as a historian,
21 that children need to be treated with extra care?

22 A. As a historian, I have no opinion on that.

23 Q. As an individual do you believe that?

24 A. I certainly do.

25 Q. The reason for that is that children are

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- 1 vulnerable?
- 2 A. I'm sorry.
- 3 Q. One of the reasons for that is that children are
- 4 vulnerable?
- 5 A. My own view on this?
- 6 Q. Yes.
- 7 A. My personal view on this?
- 8 Q. Yes.
- 9 A. That children have to be protected, yes, sir.
- 10 Q. Right.
- 11 A. Because of vulnerability, et cetera, yes.
- 12 Q. And you yourself would not want to be a part of
- 13 anything that was not protecting children, would you?
- 14 A. Of course not.
- 15 Q. You would only want to be a part of things that
- 16 were supportive of children?
- 17 A. Of course not.
- 18 Q. Of course what?
- 19 A. I'm sorry. What was the question, please?
- 20 Q. You would only want to be a part of things that
- 21 were supportive of children?
- 22 A. Oh, yes, I absolutely would. I'm sorry, I
- 23 misheard you.
- 24 Q. That's all right.
- 25 Now showing you what's been previously marked as

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1 Plaintiffs' Exhibit Number 304, --

2 A. Uh-huh.

3 Q. -- this is a document titled a, "Report on a
4 Visit to U.S.A. and Canada," April 17th to May 12,
5 1958, by three gentlemen; right?

6 A. That's what it says on the cover.

7 Q. And it's a BAT Company LTD document on the
8 bottom; is that correct?

9 A. That is correct.

10 Q. And if we can turn to the second page -- next
11 page, if you will, --

12 A. (Complying.)

13 Q. -- of the document under "'Causation' of
14 Lung Cancer," --

15 A. Uh-huh.

16 Q. -- it says here, "With one exception (H.S.N.
17 Greene) the individuals whom we met believed that
18 smoking causes lung cancer if by 'causation' we mean
19 any chain of events which leads finally to lung
20 cancer and which involves smoking as an indispensable
21 link"; do you see that statement?

22 A. Yes, I do.

23 Q. Now at least that sentence would appear to
24 indicate that there is knowledge in 1958 that smoking
25 causes lung cancer; true?

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- 1 A. That is right.
- 2 Q. You would agree with that as a historian?
- 3 A. From the interpretation of that, yes.
- 4 Q. And if I can turn all the way back to page eight
- 5 of this document, please.
- 6 A. Page?
- 7 Q. Eight.
- 8 A. Eight?
- 9 Q. Yeah.
- 10 A. Yes, sir.
- 11 Q. Item number one under "Conclusions"; "Although
- 12 there remains some doubt as to the proportion of the
- 13 total lung cancer mortality which can fairly be
- 14 attributed to smoking, scientific opinion in U.S.A.
- 15 does not now seriously doubt that the statistical
- 16 correlation is real and reflects a cause-and-effect
- 17 relationship"; do you see that?
- 18 A. Yes, I do.
- 19 Q. No doubt about this --
- 20 A. That's correct.
- 21 Q. -- any longer from a historian's perspective
- 22 causing cancer?
- 23 A. From a historian's perspective I agree that is a
- 24 fact, sure. Yes, sir.
- 25 Q. So this internal document here that we've just

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1 looked at, then, just confirms in your mind what
2 you've already indicated; that is, that as early as
3 1958, and possibly earlier, tobacco companies knew
4 beyond a shadow of a doubt, as you told me yesterday,
5 that cigarette smoking causes cancer?

6 A. I never said tobacco companies knew. I don't
7 know what the tobacco companies knew. I'm just
8 telling you what I know.

9 Q. What you know --

10 A. What I know as a historian.

11 Q. Okay.

12 A. Now, --

13 Q. Now --

14 A. Now --

15 Q. Go ahead.

16 A. No, I'm sorry.

17 Q. Now, in looking at this document, which is a
18 tobacco company document, at least this tobacco
19 company, you now know, knew as well?

20 A. That's what this states, yes.

21 Q. And if this tobacco company was in fact on a
22 trip where it was communicating with all other
23 tobacco companies, and talking with them and learning
24 from them about exactly what their view was on this
25 issue, and then they were reporting on it in this

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1 memo, then it may in fact reflect the knowledge of
2 all the tobacco companies; correct?

3 A. It may, yes.

4 Q. So this is now the first time that you're aware,
5 as you look at this document, from a private source,
6 that in fact tobacco companies knew? As a historian,
7 you're now aware of that?

8 A. Oh, as an individual or a historian. Yes.

9 Q. Either one?

10 A. Yes.

11 Q. Individual or historian, --

12 A. Yes.

13 Q. -- you're now aware, having reviewed this
14 document?

15 A. Yes.

16 Q. Thank you.

17 What you're aware of is what you knew from
18 public sources, but you now know from a private
19 source?

20 A. That is correct.

21 Q. I'm just going to stack these, keep them in some
22 order for ease of -- do it that way, if it's all
23 right.

24 I show you, sir, what's been marked as
25 Plaintiffs' Exhibit 1050, and this is a document --

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1 the author is Alan Rodgman, correct? Up on the top?

2 A. I'm sorry. Alan? I can't make out the second

3 name.

4 Q. You can see the G-M-A-N?

5 A. I see the G-M-A-N, yes, sir.

6 Q. Says, "Division: Chemical Research"?

7 A. Says, "Divisi- Chemical Research"; I assume that

8 to be "Division: Chemical Research."

9 Q. That's 1962 there?

10 A. Is that "RDM" coma?

11 Q. Yes, sir.

12 A. 1962, yes, sir.

13 Q. And on the right it has "Previous Reports: '54,

14 '55, '56, '59"; do you see that?

15 A. I see that.

16 Q. And then the title of it is: "The Smoking and

17 Health Problem, A Critical and Objective Appraisal";

18 do you see that?

19 A. Yes, I do.

20 Q. You're welcome to read any portion of this,

21 always, but for time constraints here --

22 A. Surely.

23 Q. -- I'm going down to the memorandum section.

24 A. Sure.

25 Q. The second sentence from the last it says,

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1 "During the past two decades, cigarette smoke has
2 been the target of a host of studies relating it to
3 ill health and particularly lung cancer"; do you see
4 that?

5 A. Yes, I do.

6 Q. "The majority of these studies incriminate
7 cigarette smoke from a health viewpoint"; do you see
8 that?

9 A. Yes, sir.

10 Q. On to the next page. Under "Epidemiological
11 Data" it says, "The results of thirty-four different
12 statistical studies show that cigarette smoking
13 increases the risk of developing lung cancer. Many
14 authorities believe the relationship to be one of
15 cause and effect"; do you see that?

16 A. Yes, I do.

17 Q. Down to the next -- skipping the next paragraph,
18 the next one.

19 "The statistical data from the smoking health
20 studies are almost universally accepted. After more
21 than ten years criticisms of the studies have been
22 reduced to the dictum a statistical study cannot
23 prove a cause-and-effect relationship between two
24 factors"; do you see that?

25 A. I do.

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1 Q. Now, once again, you would, as a historian, in
2 looking at this document, considering it to be a
3 document that was produced by RJR or the Reynolds
4 company, you're familiar with that; right?

5 A. Yes, I am.

6 Q. That at least in 1962, as this author was
7 reflecting back, you as a historian would, again,
8 interpret that there's knowledge here on behalf of
9 this tobacco company, at a minimum, that beyond a
10 shadow of a doubt it causes cancer?

11 A. This is what the document indicates, yes.

12 Q. Correct.

13 A. Or the sections of the document that you read.

14 Q. Right.

15 If we even go further to page four, if you will,
16 the author talks about "The Evidence to Date"; do you
17 see that?

18 A. Evidence to date, yes, sir.

19 Q. It says, "Obviously, the amount of evidence
20 accumulated to indict cigarette smoke as a health
21 hazard is overwhelming"; right?

22 A. Yes.

23 Q. And, again, that just confirms your viewpoint of
24 it being beyond a shadow of a doubt. They themselves
25 are saying it's overwhelming; --

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- 1 A. Yes.
- 2 Q. Right?
- 3 A. Yes.
- 4 Q. "The evidence challenging this indictment is
5 scant. Attempts to shift the blame to other factors,
6 for example, air pollutants, necessitates acceptance
7 of data similar to those denied in the cigarette
8 smoke case"; do you see that?
- 9 A. I do.
- 10 Q. And then if we go to the top of page five --
11 starts there, says, "... and Kotin, member of" -- see
12 where I am?
- 13 A. I'm sorry. I can't find it.
- 14 Q. Top of page five, right on the right-hand side.
15 Says, "... and Kotin, a member of the Scientific
16 Advisory Board, TIRC, stated, quote, 'The
17 statement...to the effect that the sum total of
18 scientific evidence establishes beyond reasonable
19 doubt that cigarette smoke is a causal factor in the
20 rapidly increasing incidence of human epidermal --
21 epidermoid cancer of the lung' represents a view with
22 which we concur"; do you see that?
- 23 A. I see that.
- 24 Q. And once again almost in your same words, when
25 you said beyond a shadow of a doubt, here's a

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1 statement in a Reynolds' document that's using almost
2 those same words, beyond a reasonable doubt, that
3 it's been established?

4 A. That's right.

5 Q. That, in fact, cigarette smoking causes cancer?

6 A. That's what this document shows, yes, sir.

7 Q. And so now we know, also as a historian, that
8 any statements that equivocate --

9 I remember earlier you told me that you
10 determined that tobacco companies pre-'55, they
11 lied, or after '55 they either lied or equivocated?

12 A. That's correct.

13 Q. Now we would at least know, as -- from a
14 historical perspective, and as a historian, that in
15 review of these documents that whatever they said to
16 the public wasn't an accurate equivocation? It was
17 in fact a lie, correct?

18 MR. PURVIS: Object to the form.

19 BY MR. MANNING:

20 Q. You would know that as a historian?

21 A. I would not know that as a historian. I would
22 have to have a much more kind of comprehensive
23 examination of the documents to make that kind of
24 determination. I'd have to have the providence of
25 the documents checked. I'd have to have the

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1 reliability of the writers checked. In other words,
2 on the basis of what you read me, I would have to
3 say, probably. But I would have to -- but now, as an
4 individual, not as a historian, doing research, as a
5 historian doing research, I would need these other
6 things. But that would be a different research
7 topic.

8 Q. I understand.

9 And a research topic that you could do?

10 A. But I chose not to do so.

11 Q. I understand that full well.

12 But one you could do?

13 A. One I could do? Certainly I could do it.

14 Q. You certainly could.

15 And so we're clear what you're saying: You're
16 telling me that probably it's true that there's no --
17 that it's not accurate to equivocate when you see
18 documents like this? Probably it's true that they
19 were lying?

20 A. Probably.

21 Q. But you, as a matter of being an accurate
22 historian, would want to go back and confirm the
23 sources of these documents?

24 A. If I were doing that research project, yes, sir.

25 Q. Right.

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1 And when you confirm the sources of accounts in
2 the press, all you do -- you don't -- you just read
3 the press article? You don't go back -- on your
4 pages one through thirty-seven, the great bulk of
5 what you read there was press articles, right?

6 A. That's correct.

7 Q. And you don't go back and confirm those sources?

8 A. No, sir.

9 Q. No. You rely on whoever that journalist and
10 that editor was who said whatever they said on that
11 particular day in that paper?

12 A. No, sir. Not -- not alone. Not exclusively.

13 Q. What else?

14 A. The check on the veracity of what appears in the
15 press is, of course, other press sources.

16 Q. Uh-huh.

17 A. What appears in the press, the veracity of that
18 is a check against the New York Times Index. A check
19 against other non-press sources. In other words, it
20 isn't only the press alone that is the source of
21 veracity for providence.

22 Q. Yeah.

23 A. It's largely the press, to be sure.

24 Q. Right.

25 Does it surprise you that the statements here

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1 are made so clearly about the tobacco companies'
2 knowledge of the causative effect of cigarette
3 smoking and cancer?
4 A. Does it surprise me?
5 MR. PURVIS: Objection to form.
6 BY MR. MANNING:
7 Q. Yes, sir?
8 A. No, sir.
9 Q. It doesn't surprise you?
10 A. No.
11 Q. What you suspected all along?
12 A. That's correct.
13 Q. Pardon me?
14 A. That's correct.
15 Q. Set that aside, if you'd like.
16 A. You're through with this one?
17 Q. Yes, sir.
18 (Exhibit 3139 marked for identification.)
19 BY MR. MANNING:
20 Q. Now, sir, I'm showing you a three-page
21 document. If you look on the third page, --
22 A. Which page?
23 Q. The third page.
24 A. Third. Uh-huh.
25 Q. It's been marked as Exhibit 3139 and it's a

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1 letter from Mr. Paul H. Hahn, who is the -- titled as
2 the President, to Timothy V. Hartnett, the Chairman
3 of the Tobacco Industry Research Committee. Do you
4 see that?

5 A. Yes, I do.

6 Q. In the first paragraph -- and it's dated 1962,
7 October; right?

8 A. Uh-huh. That's right.

9 Q. What it says -- it says, "At the joint meeting,"
10 in the first paragraph, "of the Executive Committees
11 of the TIRC and Tobacco Institute on Wednesday of
12 last week, there was discussion of a recommendation
13 that the tobacco industry should, in paid
14 advertising, state its position that the charges
15 against cigarettes as a health hazard do not
16 constitute a 'closed case' against smoking"; do you
17 see that?

18 A. Yes, I do.

19 Q. And you now see here documents in writing by a
20 fellow named Hahn who refers to himself as the
21 President, to Hartnett, the chairman of the Tobacco
22 Industry Research Committee, stating things in
23 writing about what they should do in advertising that
24 are contradictory of internal documents that you've
25 already seen as a historian; correct?

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- 1 A. Contradictory to which --
- 2 Q. Contradictory to the last few documents that I
- 3 showed you that, in fact, cigarette smoking does
- 4 cause cancer?
- 5 A. Yes.
- 6 Q. Correct?
- 7 A. But, remember, I characterize their response --
- 8 public response as equivocation.
- 9 Q. I understand.
- 10 A. I characterize their public response as
- 11 equivocation. And this does, in fact, confirm
- 12 that --
- 13 Q. Confirm --
- 14 A. -- equivocation.
- 15 Q. Confirms that their public response was
- 16 intentional equivocation?
- 17 A. That's correct.
- 18 Q. And this confirms that in your mind?
- 19 A. Yes, sir. Right.
- 20 Q. But intentional equivocation -- their public
- 21 response being intentional equivocation contradicts
- 22 the clarity of the internal documents expressing
- 23 their knowledge that cigarette smoking causes cancer?
- 24 A. From the two documents I read, yes. Or two
- 25 documents, excerpts of which you read me.

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- 1 Q. Correct.
- 2 A. I want to be accurate on this, now.
- 3 Q. And then the next paragraph, it says,
- 4 "Differences of opinion were expressed at the
- 5 meeting"; right?
- 6 A. Yes, sir.
- 7 Through with this?
- 8 Q. Please.
- 9 (Exhibit 3140 marked for identification.)
- 10 BY MR. MANNING:
- 11 Q. Sir, showing you what's been marked as Document
- 12 3140, that appears to be a six-page document, and
- 13 it's from a Frank J. Welch to the Tobacco Institute
- 14 Membership; right?
- 15 A. Let me just check who the --
- 16 Q. It's on the front. I'm sorry.
- 17 A. Oh, it's on the front. I'm sorry.
- 18 Q. That's all right.
- 19 A. Frank J. Welch. Yes, sir.
- 20 Q. And it's on the Tobacco Institute, Washington,
- 21 D.C., stationery; right?
- 22 A. That is correct.
- 23 Q. Dated February 4, '65?
- 24 A. That is right.
- 25 Q. And the subject is "State Legislative Matters";

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- 1 do you see that?
- 2 A. So it states.
- 3 Q. And it says that, "This is a progress report on
4 bills pertaining to tobacco, other than tax bills,
5 that have been introduced in the indicated respective
6 legislatures and the current status of each of these
7 bills"; do you see that?
- 8 A. Yes. Yes.
- 9 Q. And it goes through state by state, doesn't it?
- 10 A. That's correct.
- 11 Q. And it's to the Tobacco Institute Membership,
12 and we don't know all of who that entails, at least
13 by this document, do we?
- 14 A. No.
- 15 Q. We at least note Minnesota as number three;
16 right?
- 17 A. That's right. Third on the list of states, yes.
- 18 Q. And it says, "The five bills introduced in
19 Minnesota are now pending before Committees."
- 20 A. That's right.
- 21 Q. It says, "We, of course, are diligently working
22 toward keeping these bills from getting out of
23 Committees"?
- 24 A. That's what it says.
- 25 Q. Okay. Once again in the course of your work you

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1 never asked these lawyers from Shook, Hardy and
2 Bacon, or any of these other lawyers, to show you the
3 internal documents that would bear on issues of
4 lobbying that may bear directly on legislation and
5 committee meetings that you were listening to, did
6 you?

7 A. No, sir, I did not.

8 Q. And we now at least know by this document, that
9 at least as early as 1965 that the Tobacco Institute
10 in Minnesota was working diligently; correct?

11 A. That's what the document states.

12 Q. And historically that's interesting information,
13 isn't it?

14 A. But not unusual.

15 Q. No. I understand that.

16 A. And not surprising.

17 Q. Not surprising. We acknowledged that
18 yesterday.

19 And, in fact, may have even occurred earlier
20 than 1965; right?

21 A. Sure. And later, as well.

22 Q. And later, as well.

23 A. That's it?

24 Q. Yes, sir.

25 (Exhibit 3141 marked for identification.)

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1 BY MR. MANNING:

2 Q. Next I'm showing you a document, sir, that's
3 been marked as Exhibit 3141, right?

4 A. Yes.

5 Q. It's titled -- first of all, in the left-hand
6 corner it says "Strictly Confidential"; right?

7 A. Yes.

8 Q. "Smoking and Health: The Present Position in
9 the U.K. and How It Came About"; right?

10 A. Yes. That's the title.

11 Q. And it then says, "The Present Position: The
12 Main Evidence Against Smoking"; right?

13 A. Yes.

14 Q. And it says the following -- I'd like you to
15 read along with me and we'll interrupt sentence by
16 sentence.

17 "We all like to think of ourselves as men who
18 have the moral strength to face facts..."

19 We do like to think of ourselves that way, is
20 that right?

21 A. That's what it says.

22 Q. "...even if they are unpleasant facts"; right?

23 A. That's what it says, yes.

24 Q. "So I am going to start," and I'm reading from
25 the document here, "by asking you to face certain

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1 facts, certain vital statistics. When I mention the
2 words, quote, 'vital statistics,' end quote, some of
3 my friends immediately think of figures like
4 38-24-36."

5 That's not really very funny, is it, sir?

6 MR. PURVIS: Object to the form.

7 THE WITNESS: I have no idea -- oh, I see. I'm
8 sorry. Yes. I see what it's referring to. I'm slow
9 today. Sorry about that.

10 BY MR. MANNING:

11 Q. No problem.

12 "The vital statistics I would like you to bear
13 in mind are 7, 57, 139 and 227. There is no glamour
14 about these figures. They are the death rates per
15 hundred thousand per year from cancer of the lung of
16 men who were nonsmokers (they are 7), men who smoked
17 one to fourteen cigarettes daily (they are 57), men
18 who smoked fifteen to twenty-four cigarettes daily
19 (they are 139) and men who smoke twenty-five or more
20 cigarettes daily (they are 227). These figures are
21 all included in table one, which you have before
22 you."

23 Do you see that?

24 A. Yes, I do.

25 Q. So, in fact, this document lays out the death

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1 march numbers that were referred to yesterday that we
2 looked at in the amended complaint, doesn't it?

3 MR. PURVIS: Object to the form.

4 BY MR. MANNING:

5 Q. Doesn't it?

6 A. Those numbers I'm not sure, but I've seen
7 numbers similar to those. I don't know where they're
8 taken from.

9 Q. Well, you saw the phrase yesterday that I read
10 to you in the amended complaint, that this industry
11 is essentially on a death march?

12 A. I saw that in the complaint, yes, sir.

13 Q. And this document reflects on "The Present
14 Position: The Main Evidence Against Smoking," that
15 at least the people who drafted this document and who
16 it was sent to, as an internal tobacco document, are
17 specifically aware of the numbers of cigarettes
18 smoked, correlated to the number of deaths as it
19 relates to people marching to death; correct?

20 A. That is what this document says.

21 Q. Okay.

22 A. Except it doesn't have the term marching to
23 death.

24 Q. Right.

25 In the next paragraph, the last sentence, it

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1 says --

2 A. Next paragraph, last sentence. Yes, sir.

3 Q. The second-to-the-last sentence?

4 A. Second-to-the-last sentence.

5 "These vital statistics are really vital. They

6 threaten the life of the tobacco industry in every

7 country of the world."

8 Q. That's what it says.

9 A. I see that, yes, sir.

10 Q. Then we go to the second page, top there. It

11 says "Epidemiology" in quotes; do you see that?

12 A. Yes, I do.

13 Q. "Simply means the science of diseases found in a

14 large number of people." Are you familiar with that

15 definition?

16 A. Yes, I am.

17 Q. "Epidemiology is a particular form of applied

18 statistics"; right?

19 A. Yes.

20 Q. "A very large number of epidemiological studies

21 of smoking and disease have now been carried out in

22 many countries of the world."

23 A. Except here it's singular.

24 Q. "...country of the world," correct.

25 A. Yes.

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1 Q. "There are well over fifty good quality
2 epidemiological studies of smoking and lung cancer
3 and they all reached similar conclusions. If the
4 epidemiological studies of smoking and other diseases
5 are added in, the total runs into hundreds. But the
6 total is not important. One good, conclusive study
7 is enough -- unfortunately."

8 A. That's what it says.

9 Q. And again this paragraph, what it does is
10 confirms those words you used yesterday of beyond a
11 shadow of a doubt they knew it caused cancer?

12 A. That's correct.

13 Q. And it confirms those words we saw in this
14 document right here today, it said beyond reasonable
15 doubt it causes cancer?

16 A. That's correct.

17 Q. And it confirms their explicit knowledge of
18 that?

19 A. So this indicates, yes, sir.

20 Q. And you would conclude that as a historian as
21 you review that document; correct?

22 A. If I were doing such historical work, yes. But
23 I am not.

24 Q. I understand.

25 A. But I would need more evidence than this,

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- 1 unfortunately or fortunately.
- 2 Q. You may put that down.
- 3 A. (Complying).
- 4 Q. Sir, I'm going to show you what's been marked
- 5 down there at the bottom as Plaintiffs' Exhibit
- 6 Number 439; do you see that?
- 7 A. Yes, I do.
- 8 Q. This is now a document that is a BAT Company LTD
- 9 document, right, as stated on the bottom?
- 10 A. On the bottom, yes.
- 11 Q. And at the top left it says "Secret"; right?
- 12 A. That's what it says, yes.
- 13 Q. The title of it is "Appreciation"; right?
- 14 A. Sorry?
- 15 Q. The title says "Appreciation"?
- 16 A. "Appreciation," yes, sir.
- 17 Q. Number one, it says "AIM"; right?
- 18 A. Uh-huh.
- 19 Q. It says, "To become stronger in tobacco, as a
- 20 sound basis for further diversification."
- 21 A. That's what it says.
- 22 Q. That's the aim of this?
- 23 A. Yes.
- 24 Q. We can turn, sir, to the second page, okay?
- 25 A. Second page?

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1 Q. Yes, sir.

2 A. Okay.

3 Q. Under item "l" it says, "We have three pending
4 legal suits against Brown and Williamson in the
5 U.S.A. and U.S. lawyers are waiting for an
6 opportunity to demonstrate that the industry accepts
7 causation in order to succeed in their suits"; do you
8 see that?

9 A. I do see that, yes.

10 Q. The next item, "m": "The company's position on
11 causation is simply not believed by the overwhelming
12 majority of independent observers, scientists, and
13 doctors; right?

14 A. That's correct.

15 Q. You were one of those people who didn't believe
16 the company's position?

17 A. That is correct.

18 Q. You were like the scientists or doctors, you
19 said either they're lying, or they're equivocating;
20 right?

21 A. And most of the public, as well.

22 Q. I understand that's your view.

23 A. Uh-huh.

24 Q. Now, and at least here your belief in the lying
25 and equivocation is supported by the internal

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1 document of the company; correct?

2 A. Yes.

3 Q. They, the internal people at the company here,
4 are acknowledging that they know that people like you
5 thought they were lying; right?

6 A. So item "m" indicates.

7 Q. Okay. And so in item "o" it says, "The industry
8 is unable to argue satisfactorily for its own
9 continued existence because all arguments eventually
10 lead back to the primary issue of causation and on
11 this point our position is unacceptable"; correct?

12 A. That's what it states, yes.

13 Q. So now you have an internal document here that
14 you're reviewing for the first time that, in fact,
15 says that they're aware that their position is
16 unacceptable?

17 A. Yes.

18 Reviewing in part. The excerpts that you're
19 reading for me.

20 Q. Absolutely.

21 A. I want that to be clear for the record.

22 Q. And you can have that as something that's
23 throughout clear. Because I can't show you millions
24 of documents.

25 A. I understand that, sir.

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1 Q. I can't even show you thousands of documents in
2 maybe the three or four hours that I have left to
3 question you.

4 A. I understand that, sir.

5 Q. But we'll do as much historical analysis as we
6 can in the time remaining; okay?

7 A. No, we will not, because that is not what I am
8 here to do, historical analysis of these documents.

9 We will do analysis of the documents, of me
10 hearing them for the first time as an individual.
11 Not as an expert, not as historian, but as an
12 individual.

13 Q. Okay. Well, we'll talk about that, I'm sure.

14 Would you then turn to page three, sir.

15 Item "d"?

16 A. Item?

17 Q. "d"?

18 A. "d"?

19 Yes, sir.

20 Q. It says, "The tobacco industry is the only
21 organization or group of organizations which have the
22 motivation, potential communications expertise, and
23 financial resources to mount a campaign to redress
24 the balance which is central to long-term survival";
25 do you see that?

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- 1 A. Yes, I do see that.
- 2 Q. Item "e" says, "No individual can argue
3 successfully unless his integrity is unquestionable.
4 In the view of the forces ranged against us, our
5 integrity is seriously in question over our position
6 on causation."
- 7 A. I see that, yes, sir.
- 8 Q. Acknowledges, once again, what you already knew?
- 9 A. That is correct.
- 10 Q. Item "f" -- but what you already knew, so we're
11 clear, you knew as a historian?
- 12 A. Yes, sir.
- 13 Q. Right.
- 14 A. Yes, sir.
- 15 Q. And this acknowledges, this document, what you
16 already knew?
- 17 A. Yes, sir.
- 18 Q. On item "f" it says, "Our position on causation,
19 which we have maintained for some twenty years in
20 order to defend our industry, is in danger of
21 becoming the very factor which inhibits our long-term
22 viability"; do you see that?
- 23 A. I do see that.
- 24 Q. Item "g". "It could be that a re-evaluation has
25 to be made of what we could lose in the short term

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1 through court action in the U.S.A., against what we
2 will certainly lose in the long-term if we do not
3 defend ourselves credibly on social unacceptability";
4 do you see that?

5 A. I do.

6 Q. So there appears to be a weighing of the truth
7 and telling the truth versus a quote, "legal
8 position," doesn't there?

9 MR. PURVIS: Object to the form.

10 BY MR. MANNING:

11 Q. Correct?

12 A. I can't say what the balance of views here are.
13 I have no way of knowing that from this particular
14 statement.

15 Q. You can't determine that from that?

16 A. I can't determine that.

17 Q. No problem.

18 Well, let's go to the next page. On page four,
19 okay?

20 A. Uh-huh.

21 Q. It says, "Courses Open To Us."

22 "We can continue to maintain our present
23 position on causation." And then it lists the
24 advantages under that, right?

25 A. Uh-huh.

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1 Q. One advantage is "Our legal position in the
2 U.S.A. will remain intact, as far as we have been
3 advised"; right?

4 A. I see that.

5 Q. Must have been advised by the lawyers, don't you
6 think?

7 A. I assume so.

8 Q. Yeah.

9 So they're telling them, "Don't worry, we can
10 keep the facade going"; right?

11 MR. PURVIS: Object to form.

12 BY MR. MANNING:

13 Q. Isn't that right?

14 A. I don't know what they said. I have no way of
15 knowing. This document doesn't tell me that.

16 Q. What do you, as a historian, interpret the
17 words, "Our legal position in the U.S.A. will remain
18 in tact, as far as we have been advised"?

19 A. I do not analyze that as a historian because a
20 historian doesn't analyze one phrase in a document.

21 But, as an individual, what it tells me is that
22 they are of the belief that if they maintain their
23 equivocation position, their legal position will be
24 strengthened, or will remain intact. Whatever you
25 want to...

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- 1 Q. And the disadvantages of that down there, under
2 the second item is that, "We will continue to be met
3 with incredulity whenever we make the statement";
4 right?
- 5 A. I see that, yes, sir.
- 6 Q. That's a disadvantage that they were fully aware
7 of, right?
- 8 A. So it indicates here.
- 9 Q. Now, if you'd turn to page five.
- 10 A. (Complying.)
- 11 Q. In item "b" it says that, "We could move our
12 position on causation to one which acknowledges the
13 probability that smoking is harmful to a small
14 percentage of heavy smokers"; do you see that?
- 15 A. I do see that.
- 16 Q. "Advantages. Credibility will be restored to
17 the industry."
- 18 A. I see that, yes, sir.
- 19 Q. Do you know whether they ever made that move in
20 their position?
- 21 A. I have no way of knowing that, sir.
- 22 Q. You didn't see that in the public documents --
- 23 A. No.
- 24 Q. -- you reviewed?
- 25 A. No, I did not.

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1 Q. If they made that move that they're talking
2 about here in item number "b," to one which
3 acknowledges the probability that to a -- that
4 smoking is harmful to a small percentage of heavy
5 smokers, it wouldn't be true based on the documents
6 you've seen so far today, would it?

7 MR. PURVIS: Object to the form.

8 THE WITNESS: I couldn't say. I haven't seen --

9 BY MR. MANNING:

10 Q. You've seen documents --

11 A. I don't recall.

12 Q. -- that show unequivocally that they know that
13 smoking causes cancer --

14 A. Oh yes.

15 Q. -- to large numbers of people, whether they're
16 heavy smokers or not so heavy? You've seen those
17 documents?

18 MR. PURVIS: Object to the form.

19 THE WITNESS: Yes.

20 And I've also seen the document indicating that
21 the heavier the smoker, the more the probability.

22 BY MR. MANNING:

23 Q. Correct.

24 You've seen that, right?

25 A. I've seen that.

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1 Q. Yeah. The greater numbers of people --

2 A. The greater number and the greater probability,

3 I assume, as well.

4 Q. Okay. But this position, one which acknowledges

5 the probability that smoking is harmful to a small

6 percentage of heavy smokers, if they move to that

7 position, that still wouldn't be accurate based on

8 what you saw in the documents?

9 A. Based on what those documents show, no.

10 Q. All right. So what we don't see, at least in

11 this document, so far, at least I haven't shown you

12 so far, anything that says, by gosh, you know what we

13 ought to do? We ought to stand up and tell the truth

14 and be honest human beings. We haven't seen that

15 yet, have we?

16 MR. PURVIS: Object to the form.

17 BY MR. MANNING:

18 Q. I haven't shown you that?

19 A. No, you haven't shown me that.

20 Q. I just want to represent to you that, if I see

21 it, I'll show it to you.

22 A. Sure.

23 Q. Good.

24 A. Although, may I also point out that it makes no

25 difference in my research topic.

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- 1 Q. You said that from day one yesterday; correct?
- 2 A. That's correct.
- 3 Q. You're continuing to say that, --
- 4 A. That's correct.
- 5 Q. -- right, today, after approximately two hours
- 6 of our review of documents together?
- 7 A. That is correct.
- 8 Q. Good.
- 9 Please turn, if you will, to the last page of
- 10 the document.
- 11 A. Last page?
- 12 Q. Please.
- 13 A. Yes.
- 14 Q. And just read the conclusion, if you will, to
- 15 yourself. I won't read it into the record.
- 16 A. Surely.
- 17 (Reviewing document.)
- 18 Q. Have you read it, sir?
- 19 A. Yes, I have read it, sir.
- 20 Q. And what this shows clearly in this conclusion,
- 21 is that they knew they weren't telling the truth;
- 22 correct?
- 23 A. One can infer that from this, yes. But it
- 24 doesn't say that outright.
- 25 Q. No, it doesn't say it explicitly, but clearly

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1 one can infer it?

2 A. Yes, sir.

3 Q. And what it also says is that they're thinking

4 about changing and telling a little bit, but not tell

5 it all?

6 A. Again, it doesn't say that explicitly.

7 Q. But, again, it's a fair and accurate inference,

8 isn't it?

9 A. It's an assumption based on the reading of this,

10 yes, sir.

11 Q. It's a fair inference?

12 A. I'm sorry, inference.

13 Q. It's not an assumption?

14 A. No, no. Inference.

15 Q. And it's a fair inference from the reading?

16 A. I used the wrong word, sorry about that.

17 Q. But you agree with what I say, that it's a fair

18 inference from the reading?

19 A. Yes, sir.

20 Q. Okay. I just need a short break here.

21 (Recess taken.)

22 MR. PURVIS: Pursuant to our discussion

23 yesterday afternoon about notes and other materials

24 that may have been called for by the request, and our

25 decision that highlighted materials from

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1 Professor Berman's files should be provided to you
2 pursuant to that request, last night Professor Berman
3 spent a great deal of time reviewing his files. And
4 I'm handing you those materials that had
5 highlightings. Even went so far as to include things
6 that had Post-Its with no writing on. This is the
7 material required to be produced.

8 MR. MANNING: Thank you.

9 Let me ask a few questions about this, if I may.

10 BY MR. MANNING:

11 Q. Professor Berman, make sure I understand.

12 You've obviously seen the documents that have been
13 handed to me?

14 A. Yes.

15 Q. Are you representing that you went through all
16 your six file drawers last night and looked at every
17 page --

18 A. No, sir.

19 Q. -- of every --

20 Let me finish my question, for the record.

21 So you did not go through every page of
22 documents to see whether or not highlighting or
23 underlining was on them?

24 A. Not on every page, no, sir.

25 Q. How did you do it?

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1 A. I went through the file drawers where I knew
2 that there was highlighting and I got through that.
3 I skipped those file drawers that I knew were just
4 background stuff, in which there wasn't any
5 highlighting. And documents that were not centrally
6 used and, therefore, not highlighted, so far as I
7 could tell.

8 But basically, from my knowledge of what was
9 highlighted, we were able to go through just about
10 everything.

11 Q. How long did this take you?

12 A. Oh, approximately an hour and a half to maybe
13 two hours.

14 Q. Was somebody there with you?

15 A. Yes, sir.

16 Q. Who?

17 A. John Monica and Charles Lemley.

18 Q. Did they look through the files with you?

19 A. Yes, sir. They helped.

20 Q. Did they look through the files that you said
21 didn't have any highlighting?

22 A. No, sir, they did not.

23 Q. How many drawers did you look through?

24 A. Probably -- all of the drawers, but not
25 everything within all of the drawers.

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1 Q. And this is all that you've brought to me out of
2 the six --

3 Approximately how deep are the six file
4 drawers? Two feet deep?

5 A. Normal file drawer, I would say.

6 Q. Okay.

7 MR. MANNING: Counsel, what I will do, I guess
8 with your permission, is take these and copy them and
9 return them to you.

10 MR. PURVIS: That would be fine. Again, we gave
11 you the originals because we weren't certain whether
12 the highlighting would show up on copies.

13 MR. MANNING: I appreciate that.

14 Is there -- can I have the card of someone who
15 these should be mailed to, so I get them to the right
16 person? That --

17 We can go off the record now.

18 (Discussion had off the record.)

19 BY MR. MANNING:

20 Q. Sir, showing you what's been marked as
21 Plaintiffs' Exhibit 593.

22 A. Yes.

23 Q. This is a document called "Comments on 'Smoking
24 and Health', paper by Dr. F. G...." Someone. Right?

25 A. I can't make out the last name, no.

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- 1 Q. 1983 it appears to be, right?
- 2 A. Appears to be 1983, yes, sir.
- 3 Q. It then says that the -- first paragraph here,
- 4 "The clearly expressed aim of the paper is to
- 5 establish that a controversy still exists about the
- 6 explanation for the statistical association between
- 7 smoking and various diseases, thereby supporting the
- 8 view prevailing in legal circles advising the tobacco
- 9 industry. That the aim is to support the legal
- 10 position is also indicated by the care taken to
- 11 stress that the evidence cannot be construed as
- 12 either indictment or as an exoneration for the
- 13 allegations that smoking is a possible health
- 14 hazard"; do you see that?
- 15 A. Yes, I do.
- 16 Q. If you will turn to page four, please.
- 17 A. Yes, sir.
- 18 Q. "Overall Impressions."
- 19 A. Uh-huh.
- 20 Q. It says, "The conclusions that smoking can be
- 21 neither incriminated nor exonerated and that the
- 22 constitutional hypothesis is an equally valid
- 23 alternative to the causation hypothesis, will be
- 24 acceptable in legal circles. Scientists, outside the
- 25 industry, and unaware of the legal constraints, will

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1 not be convinced that a controversy still exists."

2 Do you see that?

3 A. Yes, I do.

4 Q. Go on to the next page, page five. In the
5 middle of that page it says, "To persist in stressing
6 controversy where little or no evidence for such
7 controversy is seen to exist, can only result in a
8 complete loss of credibility"; right?

9 A. I do see that, yes, sir.

10 Q. That's evidently by D.G. Felton, August 2, 1983;
11 right?

12 A. That's what it says at the bottom of the page,
13 yes, sir.

14 Q. That is further confirmation that the
15 equivocation is both intentional and a lie; correct?

16 MR. PURVIS: Object to the form.

17 THE WITNESS: Equivocation is intentional, yes,
18 sir. A lie, I couldn't say.

19 BY MR. MANNING:

20 Q. It's further evidence, is it not, by the
21 portions that I read to you, that this reflects
22 knowledge, at least by this author, that scientists
23 outside the industry will not even be convinced that
24 a controversy still exists? They're aware of that,
25 aren't they?

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1 A. That is correct.

2 Q. And as you saw today, they are aware of that at
3 least as early as 1958; correct?

4 A. According to the document you read me, yes, sir.

5 Q. And this position of equivocation appears to
6 continue even in 1983; correct?

7 A. That's so indicated here, yes, sir.

8 Q. And that position is not credible, is it?

9 A. No, sir, it's not.

10 Q. And it's acknowledged by them in the last page
11 here that if it continues there will be a complete
12 loss of credibility; correct?

13 A. That's what it indicates there, yes, sir.

14 Q. And so they know it's not credible, right?

15 A. So it indicates, yes.

16 Q. And so they know it's a lie; correct?

17 MR. PURVIS: Object to the form.

18 THE WITNESS: I couldn't say what they knew,
19 whether it's a lie or not. I can go on the evidence
20 that you've given me, not any more, as far as I've
21 gone.

22 BY MR. MANNING:

23 Q. Correct.

24 Based on the evidence that I've given you, not
25 having gone any further, you can say it's a lie?

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- 1 A. No. I said I can't go that far.
- 2 Q. Oh. You can only go so far as to say it, in
- 3 fact, is not credible?
- 4 A. That is correct.
- 5 Q. Okay.
- 6 A. Now remember, I'm responding here as an
- 7 individual, not as an expert. I'm responding here as
- 8 a citizen, and not as a historian.
- 9 Q. In fact, what historians do, as we've
- 10 acknowledged, and as you've acknowledged to me, is
- 11 they review documents just like this?
- 12 A. Within context.
- 13 Q. Correct. They review volumes of them within the
- 14 context?
- 15 A. Correct.
- 16 Q. And you don't just review one, you look at a lot
- 17 of them to see if one confirms the other?
- 18 A. That is correct.
- 19 Q. You don't just look at one company, because
- 20 there might just be one wild-eyed scientist in one
- 21 company that was hair-brained and off in a corner by
- 22 himself and then it would be a historical mistake to
- 23 make a conclusion based on that joker; right?
- 24 A. That's correct.
- 25 Q. But, in fact, if all the scientists in the

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1 companies were saying the same thing, and if a lot of
2 the executives were hearing those scientists and they
3 were saying the same things, then from a historical
4 perspective that would be confirmation of accuracy,
5 would it not?

6 A. Not really because a historian has to work fully
7 in that field. I am not. I have not worked fully in
8 that field and I cannot make that kind of statement.

9 Q. All right.

10 A. I can only respond to the excerpts of documents
11 that you are giving me, but reading me, on the basis,
12 not of a historical analysis, but as a personal
13 analysis.

14 Q. I understand.

15 A. And I'll be happy to do so.

16 Q. And at some point in time, when you do a
17 personal analysis, it's possible that it would be
18 converted into a historical analysis, if you so
19 decided to undertake it?

20 A. If I so decided to undertake one, it could, yes.

21 Q. Sure. Because, as we've already acknowledged,
22 and I'm just repeating, in fact you could do this
23 historical analysis, if you wanted to, if you
24 undertook it?

25 A. Most credible historians could, yes, sir.

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1 Q. Including you?

2 A. Yes, sir.

3 (Exhibit 3142 marked for identification.)

4 BY MR. MANNING:

5 Q. Sir, showing you what's been marked as Document
6 Number 3142, this is a letter by William Kloepper,
7 Junior, of the Tobacco Institute, to Mr. Tom Humber,
8 the Assistant Director of Corporate Affairs at Brown
9 and Williamson; right?

10 A. That's what the letter indicates, yes, sir.

11 Q. It says to Mr. Tom Humber, "Dear Tom: The good
12 news this morning is you are to be reappointed as
13 Chairman of the Communications Committee," for the
14 Tobacco Institute; do you see that?

15 A. It doesn't say Tobacco Institute, but I assume
16 that's what it's referring to.

17 Q. Right.

18 It says, "As we look forward, one of our tasks
19 is to blunt in every possible way the march of the
20 anti-smokers in Minnesota, where a special movement
21 is underway, using legislation and propaganda to put
22 the state in the forefront of the drive for a
23 smoke-free society"; do you see that?

24 A. I do certainly see that.

25 Q. Okay. And so now you have seen at least a

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1 document that reflected in 1965 lobbying activity on
2 behalf of the industry; right?

3 A. Uh-huh.

4 Q. Now you see one in 1984, it's not yet talking
5 about nothing less than complete victory will be
6 acceptable? What it's saying now is they're going to
7 blunt this movement in every possible way they can;
8 right?

9 A. That's what this letter says, yes, sir.

10 Q. It also says, "One of the benefits of the
11 tobacco economy in Minnesota is support of local
12 media through cigarette brand advertising"; right?

13 A. That's what it says.

14 Q. "I would like to have an opportunity to discuss
15 these public interest implications at the January
16 16th meeting of the Committee"; right?

17 A. That's what it says.

18 Q. Now you didn't interview anybody in the press of
19 all these articles that you read, to see if at all
20 there was any impact on the press by tobacco
21 companies advertising in those press?

22 A. No, I did not.

23 Q. You didn't look at that with respect to
24 Fortune Magazine, did you?

25 A. No, sir.

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1 Q. You didn't look at that with respect to

2 U.S. News & World Report?

3 A. No, I did not.

4 Q. You didn't look at that with respect to CBS?

5 A. No, I did not.

6 Q. You didn't look at that with respect to

7 Minneapolis Star Tribune?

8 A. I believe from the Minneapolis Star Tribune we

9 do have cited here -- somewhere in here -- the

10 marketing things of cigarette marketing that perhaps

11 reflect this kind of interconnection. Perhaps. But

12 let me find it for you and note it for you, please.

13 Q. No problem.

14 I'll just take at your word that there's

15 something here that perhaps reflects that.

16 A. Yes. Yes. Okay. Fine. Let's continue, then.

17 Q. What you didn't do is you didn't go interview

18 the owners of the Star Tribune, or the editors, at

19 the times in question, when these articles were

20 being --

21 A. No, I didn't.

22 Q. -- published, and scratch the surface to see

23 whether or not there was any impact by cigarette

24 advertising?

25 A. No, sir.

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1 Q. But you're at least aware that by this document
2 there was support of the local media through
3 cigarette brand advertising?

4 A. That's what the writer of the document
5 indicates, yes, sir.

6 Q. All right. Now, sir, showing you what's been
7 marked as Plaintiffs' Exhibit Number 322.

8 A. Uh-huh.

9 Q. It's a document called, "Smoking and Health:
10 The Background and Climate"; right?

11 A. That's what it says on the top, yes, sir.

12 Q. It's again, a BAT document, right?

13 A. Pardon me?

14 Q. It's a BAT document, right?

15 A. Says so on the bottom, yes, sir.

16 Q. I'm going to turn to the second page. "Two
17 defenses are still available to the industry"; do you
18 see that right in the middle?

19 A. I'm sorry.

20 Oh, yes, I do see.

21 Q. "Two defenses are still available to the
22 industry: a) lack of proof of causation"; do you see
23 that?

24 A. Yes, sir.

25 Q. Now, if you look on the third page, this is a

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1 February 28th document, 1985?

2 A. That's right.

3 Q. And you have now seen many documents that, in
4 fact, reflect, as we have discussed, that the
5 cigarette companies knew far in advance of 1985 that
6 cigarette smoking caused cancer?

7 A. Oh certainly, yes.

8 Q. In fact, they knew it beyond a reasonable doubt,
9 as they said; correct?

10 A. Yes.

11 Q. And "b" here, the defenses are --

12 A. I'm sorry. We're back on page --

13 Q. Back on page two.

14 A. Go ahead.

15 Q. In "b" we have "Voluntary assumption of risks,
16 which involve the plaintiff having been made aware of
17 the potential risks involved in smoking"; that's
18 another defense, right?

19 A. That's the indication here, yes.

20 Q. "US trial lawyers have suggested that, from a
21 practical point of view, juries may be more skeptical
22 when considering the causation defense"; it appears
23 to be what is being suggested here?

24 A. That's right.

25 Q. Right?

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- 1 A. That's right.
- 2 Q. And that skepticism they're talking about in the
- 3 public jury is the same skepticism you have?
- 4 A. Yes, sir.
- 5 Q. It then says, "We must continue to exercise care
- 6 to insure that nothing is said or done inadvertently
- 7 anywhere in the world which could jeopardize either
- 8 of these defenses"; do you see that?
- 9 A. Yes, I do.
- 10 Q. It's a powerful statement, isn't it?
- 11 A. Pardon me?
- 12 Q. It's a powerful statement?
- 13 MR. PURVIS: Object to the form.
- 14 BY MR. MANNING:
- 15 Q. Do you agree?
- 16 A. It's a statement. I don't know how -- I don't
- 17 know the writer -- how powerful his rhetoric is, or
- 18 how weak his rhetoric is. Whether this is a weak or
- 19 powerful statement, I have no way of knowing that,
- 20 sir.
- 21 Q. "Conclusion" -- do you see that?
- 22 A. Conclusion?
- 23 Q. Same page.
- 24 A. Oh, same page? Yes, sir.
- 25 Q. Second sentence, "However, while the majority of

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1 medical opinion judge the relationship between
2 smoking and various diseases to be causal, we believe
3 there's an opportunity to suggest to opinion makers
4 that open-mindedness should be reserved on the issues
5 and that some recent scientific developments
6 questioned to varying extents the judgment that
7 smoking is the major cause of a number of diseases";
8 do you see that?
9 A. I do see that, yes, sir.
10 Q. They believe there's an opportunity to suggest
11 to opinion makers; right?
12 A. That's what it says.
13 Q. And one group of opinion makers are the press?
14 A. I assume so, yes.
15 Q. Absolutely.
16 A. Yes.
17 Q. And they, as you have acknowledged on items --
18 pages one through thirty-seven, are the great bulk of
19 how public opinion was being influenced?
20 A. That's correct.
21 Q. Was through the press?
22 A. That's correct.
23 Q. And this document confirms that they, at least
24 this company, believes that it can impact those
25 public opinion makers, the press?

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- 1 A. So it says, yes.
- 2 Q. And you, in your review of press articles, saw
- 3 evidence of that, where there was equivocation?
- 4 A. No. What I saw was industry equivocation, not
- 5 reporters' equivocation, sir.
- 6 Q. I understand. Industry equivocation through the
- 7 press?
- 8 A. Of course. Sure. They were reporting what the
- 9 industry was saying.
- 10 Q. Absolutely. Being quoted and various other
- 11 things?
- 12 A. That's right.
- 13 Q. Yeah.
- 14 And so you saw, in your historical analysis,
- 15 precisely industry statements in the press that
- 16 confirm what this memo was suggesting that they could
- 17 do?
- 18 A. Yes.
- 19 Q. Namely, influence public opinion?
- 20 A. Well, through their statements, which are -- a
- 21 reporter conscientiously takes down and reports in
- 22 the news story, certainly, yes.
- 23 Q. Right.
- 24 A. I hope you're not making the assumption that the
- 25 reporter isn't biased?

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- 1 Q. No, sir.
- 2 I don't mean to throw those at you. If it
- 3 offends you, tell me.
- 4 A. No, no.
- 5 Q. I'm just getting lackadaisical.
- 6 A. No, no. That's quite all right.
- 7 Q. Now here we have a document, Plaintiffs' Exhibit
- 8 438, right?
- 9 A. That's -- yes.
- 10 Q. It's an RJR interoffice memo; right?
- 11 A. It's an interoffice memo. I'm not sure where it
- 12 comes from.
- 13 Q. Subject --
- 14 A. Yes, now I see on the other side it is.
- 15 Q. The subject is, "Comments on 1987 Strategic
- 16 Plan"; right?
- 17 A. That's what the subject states, yes.
- 18 Q. And the date is June 30 -- 13 '86?
- 19 A. June 13th.
- 20 Q. 1986?
- 21 A. 1986, yes, sir.
- 22 Q. From a Dr. Robert L. Suber to a Dr. A.W. Hayes;
- 23 right?
- 24 A. That's correct.
- 25 Q. Two docs talking to each other, right?

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1 A. Yes, sir.

2 Q. On the second page, if you will, beginning of
3 that paragraph, it says, "As a long-term solution to
4 the public's view of tobacco, I think the companies
5 should reverse their position that problems don't
6 exist with tobaccos. We should explain to the public
7 that thresholds for biological effects do exist, the
8 concept of biochemical individuality and that we are
9 attempting to make new products which address their
10 concerns"; do you see that?

11 A. I do.

12 Q. Now in your historical review, prior to looking
13 at anything like our complaint, or the Kluger book,
14 or the Internet, you saw nothing to this effect?

15 A. Sorry. To the effect of what?

16 Q. That sentence, "I think the company should
17 reverse their position that problems don't exist with
18 tobaccos. We should explain to the public that
19 thresholds for biological effects..." The remainder
20 of that sentence. You saw nothing like this when you
21 did your historical analysis?

22 A. I don't recall seeing anything like that. Yes,
23 sir.

24 Q. Correct.

25 (Exhibit 3143 marked for identification.)

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- 1 BY MR. MANNING:
- 2 Q. Now, sir, this is a document from Mike Curry to
- 3 Kent Wold; right?
- 4 A. Yes.
- 5 Q. The subject is the Minnesota Action Plan, right?
- 6 A. That is correct.
- 7 Q. June 10, 1988?
- 8 A. Uh-huh.
- 9 Q. This is an RJR document, right?
- 10 A. Yes, sir.
- 11 Q. Interoffice correspondence, correct?
- 12 A. Yes.
- 13 Q. It says, "This recommends a commitment of RJRT
- 14 people resources in Minnesota for creating a personal
- 15 involvement to neutralize the nation's most..." --
- 16 there's a word blocked out, isn't it?
- 17 A. Yeah.
- 18 Q. Can you read it?
- 19 A. I can't read the word that's blocked out, but
- 20 the next two words are clear.
- 21 Q. "...the nation's most anti-tobacco legislative
- 22 environment"?
- 23 A. Yes.
- 24 Q. That's what you acknowledged yesterday?
- 25 A. Oh certainly.

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1 Q. Minnesota was either -- was close to the top?

2 A. A leader. No question about that.

3 Q. If you go down under the "Problem" there. It

4 says, "Notably," the last sentence under "Problem,"

5 "Minnesota is a bellweather-catalyst for other

6 states seeking innovative ways to restrict tobacco";

7 do you see that?

8 A. Yes, I do.

9 Q. So this was the tobacco companies themselves

10 acknowledging that Minnesota was doing things in an

11 innovative way to restrict tobacco; right?

12 A. Yes.

13 Q. At the forefront?

14 A. At the forefront.

15 Q. It doesn't say that they were lax in enforcement

16 or anything of that sort, does it?

17 A. I don't -- from the sections that you read me,

18 no.

19 Q. All right. It says, "Therefore, Minnesota's

20 environment affects our situation in other states";

21 right?

22 A. Yes, sir. That's what it says.

23 Q. "Objectives." Last sentence, "Long term, a

24 committed involvement program," the last sentence of

25 "Objectives."

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1 A. Yes, I do see.

2 Q. "Long term, a committed involvement program may
3 achieve reversal of Minnesota's antagonism towards
4 tobacco"; right?

5 A. That's what it says.

6 Q. "Program Elements. RJR should develop a
7 corporate team comprised of our lobbyists, public
8 issues/PR group, Field Sales and Marketing Research,
9 to fully comprehend, then overcome the unique
10 Minnesota tobacco antagonism. We should combine the
11 capabilities of our marketing research with the
12 insights of RJRT's two highly respected,
13 knowledgeable lobbyists."

14 It goes on to say that they want to develop
15 persuasive open-minded messages for target
16 recipients, right?

17 A. Uh-huh.

18 Q. Under additional opportunities it says, "As
19 progress is made in personal contacts RJR should
20 become involved in contributing to Minnesota's
21 economy, especially to reach the DFL, the Democratic
22 Farm Labor leadership. Three major issues include:
23 The high importance of organized labor; massive
24 Iron Range unemployment, and the farm economy in
25 Southern and Western Minnesota."

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1 Do you see that?

2 A. I do.

3 Q. This reflects a commitment, does it not, an
4 interest, at least by Mike Curry to Kent Wold, to
5 target Minnesota?

6 A. Yes, sir.

7 Q. It reflects some understanding of Minnesota,
8 doesn't it, by way of both city, farm, and
9 Iron Range?

10 A. It seems that way, yes, sir.

11 Q. It further reflects the support by way of the
12 companies for the lobbying efforts in Minnesota?

13 A. So it indicates in this document, yes, sir.

14 Q. None of which you've analyzed or looked at in
15 the course of your --

16 A. That is correct.

17 Q. -- historical analysis?

18 A. That is correct.

19 Q. None of which you asked for from the tobacco
20 companies in the course of your historical analysis?

21 A. That's right.

22 (Exhibit 3144 marked for identification.)

23 BY MR. MANNING:

24 Q. Then there's a letter by Tom A. Briant, on the
25 third page, an Attorney at Law, to various people?

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- 1 A. Which page? Third page?
- 2 Q. Third page?
- 3 A. Yes, I have it.
- 4 Q. And it's on the stationery of Minnesota
- 5 Wholesale Marketers Association, do you see that?
- 6 A. Yes, I do.
- 7 Q. The re on the letter is the "1996 Funding
- 8 Request for the Minnesota Wholesale Marketers
- 9 Association"; right?
- 10 A. Yes.
- 11 Q. It's written to the Tobacco Institute and a
- 12 number of tobacco companies; right?
- 13 A. That's correct.
- 14 Q. Do you see where he's writing to request that
- 15 they consider funding the Wholesale Marketers
- 16 Association?
- 17 A. (Reviewing document.)
- 18 Q. Do you see that?
- 19 A. Yeah.
- 20 Q. In the first paragraph?
- 21 A. The first sentence, yes, sir.
- 22 Q. Okay. Now, at the bottom there it says, "During
- 23 1995 the association has been directly involved in
- 24 numerous tobacco-related efforts and issues. The
- 25 association's efforts have included the following."

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1 Let's go over on to item three.

2 A. Two?

3 Q. Item three, please.

4 A. Three?

5 Q. Saying the association "Lobbied against

6 twenty-one proposed cigarette excise tax increases

7 through member contact with state legislators,

8 professional lobbyists meeting with state legislators

9 and corresponding with House and Senate leadership on

10 the negative impact of a cigarette tax increase. All

11 twenty-one attempts to raise cigarette excise taxes

12 were defeated"; right?

13 A. I see that indicated there, yes.

14 Q. You did not ask the tobacco industry, or any of

15 these companies, or the institute, for documents

16 about -- that would reflect who they were associated

17 with in their lobbying efforts, did you?

18 A. No, I did not.

19 Q. You are aware that many times in lobbying

20 efforts industries enhance their strength by working

21 with other industries in attempting to --

22 A. I am familiar with that, yes.

23 Q. And, in fact, this document would reflect that

24 such a relationship successfully as described by this

25 gentleman, existed with the Minnesota Wholesale

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- 1 Marketers Association?
- 2 A. So the document indicates.
- 3 Q. And they were so successful that twenty-one
- 4 attempts to raise cigarette excise taxes, they
- 5 defeated, didn't they?
- 6 A. So it says on item three.
- 7 Q. Under item five they made political fund
- 8 contributions to key legislators, right?
- 9 A. That's what it says.
- 10 Q. In item ten they even co-sponsored the Annual
- 11 Holiday Treats Program at the Governor's mansion for
- 12 kids; right?
- 13 A. That's what it says.
- 14 Q. Other than the Minnesota Wholesalers
- 15 Association, you don't know who else the tobacco
- 16 industry and its lobbyists were working with, in
- 17 conjunction, do you?
- 18 A. No, I do not.
- 19 Q. You don't know the size and the strength of the
- 20 lobbying force that was in existence here in the
- 21 state of Minnesota on behalf of the tobacco industry,
- 22 do you?
- 23 A. No, I do not.
- 24 Q. And you don't know its effects?
- 25 A. I'm sorry.

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1 Q. And you do not really know its effects on the
2 legislation that you have reviewed in the course of
3 your historical analysis, do you?

4 A. No, not direct.

5 Q. Okay.

6 MR. MANNING: Why don't we take our lunch break.

7 (Luncheon recess taken.)

8 (Exhibit 3145 marked for identification.)

9 BY MR. MANNING:

10 Q. Sir, showing you what's been marked as
11 Deposition Exhibit 3145, you see that that is a
12 document, Draft Number 1, January, 1964; right?

13 A. That's what it says up there, yes.

14 Q. The proposal is for "Research On Trends In
15 Cigarette Smoking Among Teenagers"; correct?

16 A. That is what the title indicates, yes.

17 Q. It's on the paper of the William Esty Company?

18 A. Yes.

19 Q. Do you know who they are?

20 A. No, I have no idea.

21 Q. Says, "Purpose: To provide information on trends
22 among high school juniors and seniors, among college
23 freshmen and sophomores in: a) the incidence of
24 cigarette smoking"; right?

25 A. That's what it says, yes.

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- 1 Q. "Daily cigarette consumption"; right?
- 2 A. That's what it says.
- 3 Q. "Cigarette type and brand preference"; right?
- 4 A. That's what it says.
- 5 Q. And "Brand switching"; right?
- 6 A. That's what it says.
- 7 Q. It's pretty clear that there's some interest
- 8 here, by the statement in the document, in
- 9 high school juniors and seniors; right?
- 10 A. That's what this statement says, yes.
- 11 (Exhibit 3146 marked for identification.)
- 12 BY MR. MANNING:
- 13 Q. Next we have a document that is -- says Tobacco
- 14 Institute, gives the address in Washington; right?
- 15 A. Uh-huh. Yes.
- 16 Q. The contact is William Kloepfer, Junior; do you
- 17 see that?
- 18 A. Yes, I do.
- 19 Q. We've seen his name before, haven't we?
- 20 A. I believe so.
- 21 Q. And it says, "For use on and after Sunday,
- 22 January 3, 1971"; right?
- 23 A. That's what it says there, yes.
- 24 Q. In the beginning of the document it says,
- 25 "A cigarette industry spokesman looked ahead today

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1 to 1971 as a year of sharply reduced noise level in
2 the smoking and health controversy and said this
3 could provide for a speedup of its scientific
4 resolution"; do you see that?

5 A. I do see that.

6 Q. Now let's turn to the very end of the document,
7 if you will.

8 A. (Complying.)

9 It is a five-page document?

10 Q. Yes. Fifth page, last sentence.

11 A. Yes, I've got it.

12 Q. Says Kornegay -- does this appear to be
13 something for use on or after Sunday, January 3,
14 1971? Does it appear to you to be something for use
15 in the public?

16 A. I have no idea what it's for.

17 Q. It appears from the Tobacco Institute, or
18 something put out by the Tobacco Institute; right?

19 A. Well, the Tobacco Institute, I understand, was
20 in fact the public relations arm of the tobacco
21 industry.

22 Q. Right.

23 A. Yes.

24 Q. It appears that they're the title on the
25 document; right?

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- 1 A. That's correct.
- 2 Q. They, as public relations arm, say for use on or
3 after January 3, 1971?
- 4 A. That's correct.
- 5 Q. Last, again paragraph, on page five. It says,
6 "Kornegay declared that, quote, 'Every statistical
7 path linking smoking to some form of ill health leads
8 directly to a locked door. In 1971 we have a great
9 opportunity for new efforts to find the keys. Any
10 organization in a position to apply resources in the
11 search of those keys, and which fails to do so, will
12 continue to be guilty of cruel neglect of those whom
13 it pretends to serve'; do you see that?
- 14 A. Yes, I do.
- 15 Q. Now, when Kornegay declared there that, quote,
16 "Every statistical path linking smoking to some form
17 of ill health leads directly to a locked door," as
18 we've discussed so many times, you and I both know,
19 but you know in particular, that's not true; right?
- 20 A. I don't know what they mean by a locked door.
- 21 Q. Well, every statistical path linking smoking --
- 22 A. Uh-huh.
- 23 Q. -- to some form of ill health leads directly to
24 a locked door, meaning no, there's not ill health?
- 25 A. I'm sorry.

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1 Q. How do you read that?

2 A. I have no idea what they mean. Out of the
3 context of the five-page document, to get one
4 sentence, I don't know what they're talking about. I
5 really don't. I'm sorry.

6 Q. No problem.

7 A. I have no idea what they're talking about.
8 Maybe if I read the whole document I would. But I
9 don't, on the basis of what you gave me and what I
10 see here.

11 Q. Let's do it again for the jury's benefit and for
12 your benefit.

13 A. Surely.

14 Q. Okay. Because I want to make sure that you want
15 to stand by your position that you don't understand
16 this sentence at all.

17 The sentence says, "Kornegay declared that
18 'every statistical path linking smoke to some form
19 of ill health leads directly to a locked door.'".

20 Do you not, sir, interpret that sentence to mean
21 that -- what it says, a statistical path, such as an
22 epidemiological path?

23 A. Yes.

24 Q. Or other statistical path, linking smoking to
25 ill health, leads to a locked door; in other words,

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1 there is no link?

2 A. There is no link?

3 Q. Is that how you read it?

4 A. I can't read that at all. "Every statistical
5 path leading smoking to some form of ill health leads
6 directly to a locked door." I don't see any denial
7 of that in that phrase. I don't know what a locked
8 door means in the context of this phrase. I'm
9 sorry. I wish I could help you on it.

10 Q. Okay. It's no problem at all.

11 A. Uh-huh.

12 Q. Stand by your testimony.

13 But the last sentence, "Any organization in a
14 position to apply resources in the search for those
15 keys," keys to the locked door.

16 A. That's correct.

17 Q. "...and which fails to do so, will continue to
18 be guilty of cruel neglect of those whom it pretends
19 to serve"; correct?

20 A. That's what it says, yes, sir.

21 Q. So if in fact the tobacco companies had keys to
22 this supposed locked door, --

23 A. Uh-huh.

24 Q. -- if they had science?

25 A. If they had?

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1 Q. Science?

2 A. Science, yes.

3 Q. That they were aware of, that they didn't
4 provide to the surgeon general, for example, or to
5 the public; okay?

6 A. (Nodding.)

7 Q. And if they have other information and other
8 opportunities that they didn't provide to the surgeon
9 general and didn't provide to the public, assume that
10 to be accurate. Then, in the words of the Tobacco
11 Institute, those companies who didn't do that, would
12 be guilty of cruel neglect, wouldn't they?

13 MR. PURVIS: Object to the form.

14 BY MR. MANNING:

15 Q. Wouldn't they?

16 A. That's what it says, yes, sir.

17 Q. Thank you.

18 Now showing you, sir, what's been marked as
19 Plaintiffs' Exhibit 1118. Have you ever seen that
20 document before?

21 A. No.

22 Q. It's marked, "CONFIDENTIAL RJR"; right?

23 A. That's what it says on the top, yes, sir.

24 Q. September 21, '72, right?

25 A. That's the date on top, yes, sir.

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- 1 Q. It says, "Company Share of Smokers By Age"; do
2 you see that?
- 3 A. "Company Shares Broken By Age Groups" is what I
4 see.
- 5 Q. Right above the age groups it says, "Company
6 Share of Smokers by Age."
- 7 A. Oh, I see. The table you're referring to.
- 8 Q. Right. I'm sorry.
- 9 A. Yes, sir, I do see that.
- 10 Q. I'm sorry. My fault.
- 11 And, in fact, one of the groups that is there is
12 fourteen- to seventeen-year-olds; right?
- 13 A. Yes.
- 14 Q. And underneath that table is a paragraph that
15 says, "Of course, Marlboro is the primary reason that
16 Philip Morris does so well among young adults. In
17 the last six years Marlboro King has almost doubled
18 its share with almost all of its growth coming from
19 young adults"; do you see that?
- 20 A. Yes, I do.
- 21 Q. Turn over to the next page, please.
- 22 A. (Complying.)
- 23 Q. We now have another table of share of smokers by
24 age, from '66 to '72; right?
- 25 A. Share of smokers -- '66 to '72. Yes, I see

1 that.

2 Q. And, again, here we have the table broken out
3 between fourteen- to twenty-year-olds; right?

4 A. Yes.

5 Q. And the document is by a J.H. Sherrill, Junior,
6 from the Marketing Research Department of RJR; right?

7 A. Yes.

8 MR. PURVIS: Object to the form.

9 BY MR. MANNING:

10 Q. Does it appear that way to you?

11 A. It's -- his initials are above a typed J.H.
12 Sherrill, Junior, Marketing Research Department, yes,
13 sir.

14 Q. So it would at least appear to you, as a
15 historian, that the Marketing Research Department in
16 1972 was breaking out fourteen- to
17 seventeen-year-olds in its analysis of marketing
18 research?

19 A. According to this document, yes.

20 According to the parts of this document that
21 I've seen, yes.

22 (Exhibit 3147 marked for identification.)

23 BY MR. MANNING:

24 Q. Here we have a April 19, '73 document; right,
25 sir?

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- 1 A. The -- date is on the top, yes, sir.
- 2 Q. The re on it is "Camel Filter And Young Adult
3 Smoker"; right?
- 4 A. Yes.
- 5 Q. And it appears, again, to be written by -- on
6 the second page, someone from the Marketing Research
7 Department, named P.E. Galyan?
- 8 A. P.E. Galyan, yes, sir.
- 9 Q. And it appears --
- 10 A. Although there's no signature. Just the typed
11 indication.
- 12 Q. All right.
- 13 In the first paragraph it says -- and it appears
14 to be a Mr. C.C. Standen; right?
- 15 A. That is correct.
- 16 Q. "You have expressed interest in examining the
17 youth market and the role Camel Filter plays in that
18 market. The attached information should help you in
19 this regard.
- 20 "The Youth Market. Judgmentally, a brand's
21 ability to gain acceptance among younger smokers is
22 an indication of its potential for future success";
23 right?
- 24 A. That's what it says.
- 25 Q. "The size of the market is also large"; right?

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- 1 A. That's what it says.
- 2 Q. Going down under "The 85 Millimeter Normal
3 Flavor Filter Category," the last sentence says,
4 "Finally, note that among very young smokers in the
5 fourteen- to twenty-year age, 54% choose
6 85 millimeter NFF brands"; do you see that?
- 7 A. Yes, I do.
- 8 Q. Do you know what NNF brands means?
- 9 A. No, I do not.
- 10 Q. Again, it would be -- appear to be a second
11 document, close in time to the one I just showed you,
12 one year later in '73, on behalf of RJR in which
13 communication is going on, in their words, about the
14 very young smokers in the fourteen- to twenty-age
15 range; correct?
- 16 A. That's what the document seems to indicate, yes,
17 sir.
- 18 Or, again, that portion of the document which we
19 read.
- 20 May I make a blanket statement at this time?
- 21 Whenever I say that, I mean the portion of the
22 document which we have read.
- 23 Q. Showing you, sir, what's been marked as
24 Plaintiffs' Exhibit 1035; do you see that document?
- 25 A. I do.

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- 1 Q. If you turn to the -- it's a little hard on the
2 first page, but it says in handwriting, "Marketing
3 Plans"; right?
- 4 A. On the bottom -- on the middle of the first page
5 it says so, yes, in handwriting.
- 6 Q. Then on the second page it says, "1975 Marketing
7 Plans Presentation, Hilton Head, September 30, '74?"
- 8 A. That's what it says.
- 9 Q. Do you know where Hilton Head is?
- 10 A. It's on the coast of the Atlantic Coast. It's a
11 resort hotel, I believe. If I'm not mistaken.
- 12 Q. A little island right off of Charleston,
13 South Carolina?
- 14 A. That's right. Off Charleston.
- 15 Q. And on chart number one, the objective in 1975,
16 it says, "Our paramount marketing objective in 1975
17 and ensuing years is to re-establish RJR's share of
18 marketing growth in the domestic cigarette industry";
19 do you see that?
- 20 A. I do.
- 21 Q. Pretty clear statement about their intention and
22 objective, isn't it?
- 23 A. Yes.
- 24 Q. Chart number two, item number one.
- 25 A. Uh-huh.

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1 Q. Under four key opportunities, one of them is --
2 the first one, to increase our young adult franchise;
3 right?

4 A. I see it.

5 Q. At the bottom of that, number two, it says,
6 "First let's look at the growing importance of the
7 young adult in the cigarette market. In 1960 this
8 young adult market, fourteen to twenty-four age
9 group, represented 21% of the population"; do you see
10 that?

11 A. I do.

12 Q. So you're now seeing, once again, the young
13 adult market being referred to as fourteen-,
14 fifteen-, sixteen-, and seventeen- and
15 eighteen-year-olds?

16 A. According to this document, yes.

17 Q. And you've seen that now in numerous documents?

18 A. In at least two.

19 Q. Under chart number three, "As seen by this
20 chart, they will represent 27% of the population in
21 1975. They represent tomorrow's cigarette business.
22 As this fourteen to twenty-four age group matures
23 they will account for a key share of the total
24 cigarette volume for at least the next twenty-five
25 years; right?

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1 A. That's what it says, yes, sir.

2 Q. Please turn to the second page.

3 A. Next page?

4 Q. Please.

5 A. (Complying.)

6 Q. What do you see in that -- I'm not going to read

7 it all under chart number four. It talks about

8 Philip Morris having 38% share of the fourteen to

9 twenty-four year old age category and B&W a 21%

10 share; right?

11 A. I see that, yes, sir.

12 Q. See how it says, "With strong adult franchises

13 and high cigarette brand loyalties, this suggests

14 continued growth for Philip Morris and B&W as their

15 smokers mature"; right?

16 A. So it says on this document.

17 Q. Says, "In sharp contrast, our company line shows

18 a pattern of relatively even strength among all age

19 groups and strength in the twenty-five and older

20 categories, where we exceed both competitors"; do you

21 see that?

22 A. That's what it says, yes, sir.

23 Q. If you skip to the last sentence it says, this

24 suggests slow market share erosion for us in the

25 years to come unless the situation is corrected;

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1 right?

2 A. I see it, yes.

3 Q. Next page.

4 A. (Complying.)

5 Q. "Thus, our strategy becomes clearer for our
6 established brands. Direct advertising appeal to the
7 younger smokers"; right?

8 A. I see it.

9 Q. Showing you, sir, what's been marked as
10 Plaintiffs' Exhibit -- Plaintiffs' Exhibit 1037.
11 That's a one-page document, right?

12 A. Yes.

13 Q. Correct, sir? One-page document?

14 A. Yes, it is a one-page document.

15 Q. Marked "RJR's Secret"; right?

16 A. Yes, sir. "RJR Secret" on top, right-hand
17 corner.

18 Q. Again, it's from a J.F. Hind to Mr. C.A. Tucker;
19 right?

20 A. J.F. Hind, signed Jim, yes, sir. To Mr. C.A.
21 Tucker, yes.

22 Q. About midway through the first paragraph it
23 says, "To ensure increased and long-term growth for
24 Camel Filter, the brand must increase its share
25 penetration among the fourteen to twenty-four age

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1 group, which have a new set of more liberal values
2 and which represent tomorrow's cigarette business";
3 do you see that?
4 A. I do see it.
5 Q. You've now seen a number of documents here by
6 RJR that reflect a clear intent to target, penetrate,
7 advertise to, appeal to, fourteen-, fifteen-,
8 sixteen- and seventeen-year-olds; correct?
9 A. I have seen such documents.
10 Q. You've never seen those before?
11 A. Pardon?
12 Q. You've never seen those before?
13 A. I've never seen those before, no, sir.
14 Q. You've seen those allegations made in the
15 amended complaint?
16 A. I've seen those made in the amended complaint.
17 Q. You've seen them discussed in Mr. Kluger's book
18 "From Ashes to Ashes"?
19 A. Yes, I have.
20 Q. You've read about such allegations in documents
21 that are contained in the book "The Smoking Papers"?
22 A. No, I have not read the book "The Smoking
23 Papers."
24 Q. No. I said you've read about those allegations
25 existing in documents when you have read about "The

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1 Smoking Papers" book in press and on the Internet?

2 A. Probably in the press, yes, sir.

3 Q. And now for the first time you have seen some of
4 those actual documents; correct?

5 A. Some, yes.

6 Q. And so it is at least easy for you now at this
7 stage to say, based on this very short time we've had
8 together reviewing documents, that you've at least
9 reviewed more than one document --

10 A. Yes.

11 Q. -- that shows at least one company targeting the
12 youth of America?

13 MR. PURVIS: Object to the form.

14 BY MR. MANNING:

15 Q. Correct?

16 A. I've seen those documents.

17 Q. As well as targeting the youth of Minnesota;
18 correct?

19 A. I have not seen any reference to youth in
20 Minnesota, but I assume the youth of America being
21 targeted, meant the youth of Minnesota, as well.

22 Q. Right.

23 And you told me earlier that you would not want
24 to be a part of, in any way, shape, or form,
25 personally supporting or lending a hand to targeting

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1 kids to smoke?

2 A. That is correct, I said that.

3 Q. You would find that reprehensible to be a part

4 of that yourself?

5 A. I find it reprehensible, yes, sir.

6 Q. And you find it reprehensible if the tobacco

7 companies do it, don't you?

8 A. Oh, certainly.

9 Q. And you think they ought to stop if they do,

10 don't you?

11 A. I certainly do.

12 Now I'm talking as a person, a citizen, not as

13 an expert witness in this proceeding.

14 Q. Showing you, sir, Plaintiffs' Exhibit 148.

15 Philip Morris document, inter-office correspondence,

16 Richmond, Virginia, from a Myron Johnston to a

17 Dr. R.B. Sellgman, May 21, '75; right?

18 A. That's what it says on the top, yes, sir.

19 Q. Down at the bottom when it says

20 "Demographics" -- do you see that?

21 A. Yes, sir. I do see that.

22 Q. "It has been well-established by the National

23 Tracking Study and other studies that Marlboro has

24 for many years had its highest market penetration

25 among younger smokers. Most of these studies have

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1 been restricted to people age eighteen and over. But
2 my own data, which includes younger teenagers, shows
3 even higher Marlboro market penetration among
4 fifteen- to seventeen-year-olds. The teenage years
5 are also important because those are the years during
6 which most smokers begin to smoke. The years in
7 which initial brand selections are made and the
8 period in the life cycle in which conformity to
9 peer group norms is greatest"; do you see that?

10 A. I do see that.

11 Q. Next page.

12 A. (Complying.)

13 Q. "It seemed reasonable to believe, therefore,
14 that there should be a relationship between the
15 number of fifteen- to nineteen-year-olds and Marlboro
16 sales during the period of Marlboro's rapid growth.
17 I started running some correlations and found some
18 interesting relationships, all significant at better
19 than the .005 level."

20 You understand that to be a statistical
21 correlation; right?

22 A. Yes, I do.

23 Q. Read the whole next page there, if you will.

24 A. (Reviewing document.)

25 Page three?

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- 1 Q. No. All of page two.
- 2 A. Page two?
- 3 Q. I won't read it.
- 4 A. (Reviewing document.)
- 5 Q. All right, sir?
- 6 A. Yes.
- 7 Q. You would at least agree with me that there is
- 8 someone here who's attempting to do a relatively
- 9 thorough statistical analysis on fifteen- to
- 10 nineteen-year-olds; correct?
- 11 A. Yes.
- 12 Q. And they're doing it on -- in relationship to
- 13 Marlboro's share of market?
- 14 A. That's what this indicates, yes.
- 15 Q. Showing you, sir, what's been marked as
- 16 Plaintiffs' Exhibit 355 previously. This is, once
- 17 again, a Philip Morris document dated March 29, '79;
- 18 right?
- 19 A. That's correct.
- 20 Q. It says here, "Marlboro represents 60% of
- 21 Philip Morris USA sales. The brand accounts for
- 22 one-third of all growth of Philip Morris USA. In
- 23 1978 a hundred one billion units were sold"; right?
- 24 A. That's what it says, yes, sir.
- 25 Q. "The brand represents 17% of the national share

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1 of cigarettes. One in five smokers smoke Marlboro";
2 right?
3 A. That's what it says.
4 Q. Last sentence, "It was the first brand to pass
5 one hundred billion units sold"; right?
6 A. That's what it says.
7 Q. "Demographics." It says, "Marlboro dominates --
8 dominates in the seventeen and younger age category,
9 capturing over 50%" -- and they use the word
10 capturing, don't they?
11 A. That's what it says.
12 Q. "...over 50% of this market. In the eighteen to
13 twenty-four age group Marlboro dominates with 30.7%
14 share"; right?
15 A. That's what it says, yes.
16 Q. So here now we have two Philip Morris documents
17 that we've seen, one I just showed you, and this one,
18 in which, again, similar to RJR, there is a focus on
19 thirteen-, fourteen-, fifteen-, sixteen-,
20 seventeen-year-old kids; correct?
21 A. That's what it indicates on the document, yes,
22 sir.
23 Q. It doesn't say, "Gosh, these kids are smoking
24 our cigarette. We better do something about this and
25 advertise and change this in some way"; does it?

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1 A. No.

2 Q. In fact, what the prior document showed was a
3 statistical analysis of those kids and how it bore on
4 the future relation -- the future growth of the
5 company, didn't it?

6 A. That's what it said, yes, sir.

7 Q. And that's the same kind of reprehensible thing
8 that we talked about with RJR, isn't it?

9 A. That is correct.

10 Q. And on page two of this it says here...

11 We'll move on from that.

12 (Exhibit 3148 marked for identification.)

13 BY MR. MANNING:

14 Q. And on 3148 it says "Acknowledgment Receipt for
15 Confidential Report"; right?

16 A. Yes.

17 Q. It says, "This report is confidential to the
18 business of the company. It should be carefully
19 handled and is not transferable to another individual
20 and is not to be photocopied"; do you see that?

21 A. Yes, I do.

22 Q. "If the report had served its purpose and is no
23 longer needed, please return it immediately to the
24 Central Files Section at the Research Center for
25 recordkeeping purposes and destruction"; right?

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- 1 A. I see it, yes.
- 2 Q. That's a careful -- careful way in which to
- 3 handle documents, would you not agree?
- 4 A. I have no idea how companies handle documents.
- 5 That's not an area of my expertise.
- 6 Q. Right.
- 7 A. I've never done any corporate history.
- 8 Q. And this is copy number four, right?
- 9 A. According to the lower portion of it, it says
- 10 copy number four, yes, sir.
- 11 Q. And the title on the document, which is, -- you
- 12 acknowledge a receipt to get it for a confidential
- 13 report. You return it for recordkeeping and
- 14 destruction. The title of it is "Young Smokers
- 15 Prevalence Trends Implications"; right?
- 16 A. That's what it says.
- 17 Q. And the date is 1981, isn't it?
- 18 A. Yes.
- 19 Q. Now showing you what's been marked as
- 20 Plaintiffs' Exhibit 358, KEYWORDS at the bottom, it
- 21 says, "Smoking Prevalence, Youth, Young Smokers,
- 22 Demographic Trends"; do you see that?
- 23 A. Yes.
- 24 Q. And it's copy number four?
- 25 A. Copy -- yes. Copy number four, right.

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- 1 Q. Issued to L. Meyer, the same name on the
2 acknowledgment receipt we saw on Deposition Exhibit
3 3148; right?
- 4 A. Issued -- I'm sorry. Oh yes. Issued to
5 L. Meyer. I have it.
- 6 Q. Same guy we saw there on 3148, right?
- 7 A. At least a man with the same initials and second
8 name, yes.
- 9 Q. If you look to the table of contents.
- 10 A. Yes, sir.
- 11 Q. "Summary"; right?
- 12 A. Uh-huh.
- 13 Q. Teen smoking prevalence from '68 to '74?
- 14 A. Right.
- 15 Q. Teen smoking prevalence, '75 to '80?
- 16 A. Yes.
- 17 Q. "Smoking Prevalence and Educational
18 Aspirations"?
- 19 A. Yes.
- 20 Q. "Race Differences in Smoking Prevalence"?
- 21 A. Yes.
- 22 Q. And on and on?
- 23 A. Yes.
- 24 Q. Next page, please.
- 25 A. Uh-huh.

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- 1 Q. "Summary." It says here, "It is important to
2 know as much as possible about teenage smoking
3 patterns and attitudes"?
4 A. That's what it says, yes.
5 Q. "Today's teenager is tomorrow's potential
6 regular smoker"?
7 A. Customer.
8 Q. Customer. Thank you.
9 Also would be a smoker, right?
10 A. Oh, of course. I mean they're not selling, you
11 know, bagels.
12 Q. You got it.
13 "...and the overwhelming majority of smokers
14 first begin to smoke while still in their teens"; do
15 you see that?
16 A. Yes, I do.
17 Q. That's a tobacco company that knows that, isn't
18 it? They know that, don't they?
19 A. I would assume they did.
20 Q. They're stating it in the first two sentences of
21 the summary of this strictly confidential document?
22 A. I would think so, yes, sir.
23 Q. That you have to sign out to get somehow, right?
24 A. Yes.
25 Q. That is telling people in the company don't copy

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1 it?

2 A. That's right.

3 Q. "In addition," it says, "the ten years following
4 the teenage years is the period during which average
5 daily consumption per smoker increases to the average
6 adult level"?

7 A. That's what it says, yes, sir.

8 Q. "The smoking patterns of teenagers are
9 particularly important to Philip Morris"; do you see
10 that?

11 A. Yes.

12 Q. That's in 1981, isn't it?

13 A. That's correct. Yes, '81.

14 Q. They're emphasizing teenagers here in this
15 document, aren't they?

16 A. In this particular document it seems so, yes.

17 Q. It sure does.

18 "Of the eleven packings of which the median age
19 of smokers is under age thirty, seven are
20 Philip Morris packings and the share index is highest
21 in the youngest age group for all Marlboro and
22 Virginia Slims packings and for B&H Lights and
23 Menthol"; right?

24 A. That's what it says.

25 Q. "Furthermore, it is during the teenage years

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1 that the initial brand choice is made"; correct?

2 A. That's what it says.

3 Q. "At least a part of the success of Marlboro Red
4 during its most rapid growth period was because it
5 became the brand choice among teenagers who then
6 stuck with it as they grew older. This, combined
7 with the rapid growth in the absolute number of
8 teenagers"; right?

9 A. That's what it says, yes, sir.

10 Q. "Between '67 and '76 the number of fifteen- to
11 nineteen-year-olds in the U.S. increased 18% and
12 there was also an increase during at least part of
13 that period in the percent of teenagers who smoked
14 cigarettes"; right?

15 A. That's what it says.

16 Q. Continuing, it says, "Average daily consumption
17 of these young smokers also increased, so that
18 between '68 and '74 the number of twelve- to
19 eighteen-year-olds who smoked ten or more cigarettes
20 a day more than doubled"; right?

21 A. That's what it says, yes, sir.

22 Q. This is one of the first times you've at least
23 seen twelve-year-olds referred to; right?

24 A. Yes, in this document.

25 Q. Or in other documents?

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- 1 A. That's right.
- 2 Q. Prior to this, the lowest you saw reference was
- 3 fourteen and fifteen; right?
- 4 A. Yes, that's correct.
- 5 Q. But now Philip Morris is referencing
- 6 twelve-year-olds?
- 7 A. In this document.
- 8 Q. Yeah.
- 9 "Industry sales were also aided by the fact
- 10 that this period was one of rapid increase in the
- 11 number of people aged twenty to twenty-four -- ages
- 12 during which average daily consumption increases";
- 13 right?
- 14 A. That's what it says, yes.
- 15 Q. Turn two pages, please.
- 16 A. Uh-huh.
- 17 Page three, is that the --
- 18 Q. Yes, sir.
- 19 Now we have a table in which the ages are broken
- 20 down even a little more clearly by Philip Morris. We
- 21 have twelve- to fourteen-year-olds; right?
- 22 A. On table one?
- 23 Q. Yes.
- 24 A. Yes.
- 25 Q. Then we have fifteen- to sixteen-year-olds;

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1 right?

2 A. Yes.

3 Q. Then we have seventeen- to eighteen-year-olds?

4 A. Yes.

5 Q. And there's a lot of data there, percent who are

6 current regular smokers, on and on; right?

7 A. Uh-huh.

8 Q. No doubt in your mind as you look at this

9 document that there's a thorough analysis going on by

10 Philip Morris of teenagers, is there?

11 A. I don't know how thorough, but there is an

12 analysis going on about teenagers, yes.

13 Q. Just thumb through the rest of the document, if

14 you will.

15 A. Surely.

16 Q. Just kind of thumb through it, take a minute,

17 and...

18 A. (Reviewing document.)

19 Q. Sir, all I'm saying is --

20 A. I am sorry.

21 Q. There's two attachments to the document, right?

22 Attachment A and Attachment B. Graphs, charts,

23 population trends, on and on, right?

24 A. Attachment B has charts, yes, I see that.

25 Q. Attachment A is a description of data sources,

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1 right?

2 A. Attachment A is a description of data sources,

3 yes.

4 Q. And then look at page fifteen.

5 A. Fifteen? Yes, sir. I have it.

6 Q. Here they even analyze the school grade in which

7 seniors first begin smoking on a daily basis by race,

8 breaking it out white and black. From '76 to '79.

9 They go all the way down to grade six, don't they?

10 A. That's right.

11 Q. They skip grade seven, but they've got grade

12 eight and grade nine there, don't they?

13 A. Pardon me?

14 Q. They skip grade seven, but they have grade eight

15 and grade nine there, don't they?

16 A. Yeah, they do.

17 Q. So, sir, on your review of this document, if

18 someone said -- for example, somebody from

19 Philip Morris said, "We're not interested in the

20 young smoker, and we don't target the young smoker,

21 and they're of no interest to us, and it's an adult

22 habit, and all we want is adults," based on your

23 review of this document you would at least have grave

24 questions about the truth of that statement, wouldn't

25 you?

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1 MR. PURVIS: Object to the form.

2 THE WITNESS: Yes.

3 BY MR. MANNING:

4 Q. In fact, based on your review of this document
5 and the other documents that I've shown you here, if
6 someone from Philip Morris made the statement, "We're
7 not interested in young kids smoking at all. We're
8 only interested in adults," you would also conclude
9 that's a lie, wouldn't you?

10 MR. PURVIS: Object to the form.

11 BY MR. MANNING:

12 Q. You'd have to?

13 A. I would conclude that they were saying things
14 that were contrary to what I believed to be the known
15 facts about smoking and health, yes.

16 Q. And if they said they're not interested in --

17 A. Oh, I'm sorry.

18 Q. -- in targeting kids --

19 A. Then, no. Then I would conclude, on the basis
20 of just a casual look at this document, and I must
21 say it was a casual look, and the other documents
22 that you showed me, that certainly they were
23 interested in the young adult market.

24 Now, I'm saying this not as a historian, because
25 I haven't done any historical research on this.

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1 Q. I understand.

2 A. Nor as a marketing specialist. I'm not a
3 marketing specialist.

4 Nor as a statistician. I'm not a statistician.
5 I'm saying it in response to your request for me to
6 look at portions of this document and give you my
7 human response.

8 Q. Correct. That's what we hope, is that all
9 experts are all people?

10 A. Absolutely.

11 Q. Executives?

12 A. Exactly.

13 Q. Lawyers, and everyone, always remain human.

14 A. Exactly.

15 Q. And remain human beings.

16 A. Yes.

17 Q. And testify and do things always as
18 human beings?

19 A. Absolutely.

20 Q. And as a human being you would agree that based
21 on this document and on other documents you've seen
22 here, just the last two or three, with respect to
23 Philip Morris, I won't talk about Reynolds, we
24 already did that, that if they said publicly we're
25 not interested in kids, we don't target kids, we're

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1 not interested in kids smoking, we're only interested
2 in adults, these documents would contradict that
3 statement?

4 A. It would.

5 Q. And so, if they made that statement publicly, by
6 these documents contradicting that statement, if they
7 made the public statement, they're not interested in
8 kids, it would be a lie?

9 MR. PURVIS: Object to the form.

10 BY MR. MANNING:

11 Q. Wouldn't it?

12 A. Well, I would need more evidence than that.

13 Q. Yeah. You'd want to see if the pattern
14 persisted over a period of time?

15 A. And if there's any reasonable explanation for
16 the discrepancy, yes.

17 Q. Sure.

18 One of the ways that you would find whether
19 there was a reasonable explanation for the
20 discrepancy is you could ask people at the tobacco
21 companies, couldn't you?

22 A. I'm not interested.

23 Q. I know that.

24 Just not interested?

25 A. Not interested.

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- 1 Not interested as a historian.
- 2 Q. Right. But as a human being you're interested
- 3 to not support kids becoming addicted?
- 4 A. That's right.
- 5 Q. Showing you, sir, Plaintiffs' Exhibit 1058;
- 6 okay?
- 7 A. Uh-huh.
- 8 Q. It's an RJR document, right, the front?
- 9 A. Yes, an RJR document.
- 10 Q. And it's titled "Secret Number Fifteen"; right?
- 11 A. That's what it says on the cover, right.
- 12 Q. And it says, "Implications and Activities
- 13 Arising From Correlation of Smoke pH With Nicotine
- 14 Impact, Other Smoke Qualities, and Cigarette Sales";
- 15 do you see that?
- 16 A. That's what it says, yes.
- 17 Q. Just take a look at the second page and look at
- 18 the Table --
- 19 A. Second page.
- 20 Q. -- Table of Contents there.
- 21 A. Beyond the Table of Contents?
- 22 Q. No. Just look at the Table of Contents.
- 23 A. Oh. Table of Contents. I'm sorry.
- 24 Q. Let's take a short break and come back to this.
- 25 A. Sorry?

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1 MR. PURVIS: He wants to take a break.

2 (Recess taken.)

3 BY MR. MANNING:

4 Q. Doctor, I just stumbled across --

5 MR. MANNING: Back on the record.

6 BY MR. MANNING:

7 Q. I just stumbled across a document in the

8 documents that were given to me from your files last

9 night in which there's a Post-It on one.

10 A. Is there?

11 Q. Yeah. I'm showing it to you. It says,

12 "Dr. Berman, I need to talk to you about other

13 sources I've stumbled across, Dave"; do you see that?

14 A. Yes.

15 Q. Do you have any memory what he stumbled across?

16 A. No, I don't recall.

17 Oh, this was in the Harold Diehl Library. I

18 think he stumbled across some Diehl material having

19 to do with -- additional material having to do with

20 smoking and health. This is my best recollection.

21 I'm not sure.

22 Q. You don't know, for example, if he stumbled

23 across some tobacco company documents on the

24 Internet?

25 A. No, sir.

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1 He would have told me that if he did and he
2 didn't.

3 Q. You don't remember him telling you that?

4 A. That's correct.

5 Q. You don't recall whether he stumbled across
6 Kluger's book "From Ashes to Ashes"?

7 A. Oh, he knew of its existence. It was on my
8 desk.

9 Q. I thought you said it was on your book shelf and
10 you didn't know --

11 A. Well, on the book shelf on the top of my desk,
12 yes, sir.

13 Q. And he saw it there?

14 A. I assume he did. It wasn't hidden.

15 Q. You don't know whether he read it?

16 A. I have no idea whether he read it or not, no.

17 No, to the best of my recollection it had to do
18 with Dean Diehl.

19 Q. Thank you. Now, --

20 A. Yes, sir.

21 Q. -- going on to that document marked 1058, right?

22 A. Yes.

23 Q. If you look at that -- under Roman Numeral
24 Number II, second paragraph.

25 A. On Roman II, yes.

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1 Q. Okay?

2 A. Yes, I have it.

3 Do you want me to read it?

4 Q. Please.

5 I'm not going to read it out loud.

6 A. (Reviewing document.)

7 Q. What I'd like you to do, Doctor, is read

8 Roman Numeral Number II there in its entirety.

9 A. I'm halfway through.

10 Q. I understand.

11 And then go over and read Roman Numeral

12 Number III, as well, --

13 A. Okay.

14 Q. -- in its entirety.

15 A. Roman Numeral II and III in its entirety.

16 Q. Yes. III on page two of the document, just so

17 the record is clear. And then we don't have to read

18 in exactly what it is.

19 Go ahead.

20 A. Okay.

21 (Reviewing document.)

22 I've finished reading.

23 Q. Now is this the first time that you have read

24 anything on the topic of smoke pH and free nicotine?

25 A. That is absolutely correct.

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1 Q. You've not seen the topic of smoke pH and free
2 nicotine reported in your historical analysis in the
3 press?

4 A. I don't recall having seen that.

5 Q. You don't recall seeing anything from the
6 tobacco companies that was quoted in the press on
7 this topic of smoke pH and free nicotine?

8 A. I don't recall seeing that, no, sir.

9 Q. And do you find it educational? I mean it
10 educates you on the issue?

11 A. Oh, yesterday you asked me about free nicotine
12 and I said I didn't know about it. Now, having read
13 the definition, I know something about it. Thank you
14 for informing me.

15 Q. So what it says here is, "Thus," in the second
16 paragraph under Roman Numeral Number III, --

17 A. Second paragraph of --

18 Q. Roman Numeral Number III.

19 The third sentence says, "Thus, Marlboro and
20 Kool smokes contain more 'free' nicotine than our
21 comparable brands; hence, would be expected to show
22 more instantaneous nicotine kick than our normal
23 brands. Charts XI and XII show these relationships,
24 along with some comparative sales data to be
25 discussed later"; right?

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1 A. That's what it says.

2 Q. If you turn to the next page, under

3 Roman Numeral Number V, "Marketing Correlations and

4 Implications"; --

5 A. Uh-huh.

6 Q. -- in the second paragraph, second sentence, it

7 says, "Our preliminary correlations strongly suggest

8 that this is the case and that the vigorous sustained

9 sale in growth of sales of Marlboro and other

10 Philip Morris brands and Kool correlates closely with

11 the increased smoke pH, hence increased 'free'

12 nicotine and nicotine impact of those brands. The

13 accompanying reduction in mouth irritation and stemmy

14 taste, and the increased burley character may also be

15 factors"; right?

16 A. That's what it says, yes, sir.

17 Q. Again, you don't have any recollection of the

18 tobacco companies discussing free nicotine with the

19 press or with the public in any way?

20 A. I have no such recollection, no.

21 Q. And then if you look at Roman Numeral VI,

22 "Present RJR Brand Activity." If our data,

23 correlations and conclusions are valid, then what has

24 emerged is a rather new type of cigarette,

25 represented by Marlboro and Kool, with high nicotine

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1 kick, burley flavor, mildness to the mouth, and
2 increased sensation to the throat, all largely the
3 result of higher smoke pH." Do you see that?

4 A. I see that, yes.

5 Q. And in going back to page two, the third
6 paragraph, under Roman Numeral Number III, --

7 A. Third paragraph under III, yes.

8 Q. You see that, "As a result of its higher smoke
9 pH, the current Marlboro, despite a two-thirds
10 reduction in smoke tar and nicotine over the years,
11 calculates to have essentially the same amount of
12 free nicotine in its smoke as did the early Winston";
13 do you see that?

14 A. I do.

15 Q. This document would suggest to you, as a
16 historian, that the issue of free nicotine -- if you
17 were going to do any historic analysis, you would
18 want to do much further work to understand free
19 nicotine, exactly what it is in relation to pH value
20 and its impact on sales and on and on, right?

21 A. If I were doing a marketing survey, or a history
22 of marketing, or a history of the corporation, of
23 tobacco industry, I certainly would want to know that
24 and I would certainly want to consult appropriate
25 scientists who are capable and competent in the field

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1 of whatever chemistry, biology, is involved in this.

2 Q. Okay.

3 A. I am not capable of commenting in that area.

4 (Exhibit 3149 marked for identification.)

5 BY MR. MANNING:

6 Q. Showing you, sir, what's been marked as

7 Exhibit 3149; okay?

8 A. Yes.

9 Q. It's a memo from Michael Brozek to Roger

10 Mozingo, via electronic mail, April 11, '85; right?

11 A. That's correct.

12 Q. The re on it is a "Minnesota Legislative

13 Status"; right?

14 A. That's what it says, yes, sir.

15 Q. It looks like a Brown and Williamson document;

16 right?

17 A. B and W on the top, yes.

18 Q. In fact, if we go to the document on

19 "Background" --

20 A. Background, yes, sir.

21 Q. We've seen some other documents about this time

22 about lobbying, haven't we?

23 A. '85?

24 Q. Yes, sir.

25 A. Yes, sir. I saw one -- at least one that you've

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1 shown me.

2 Q. Right.

3 A. Portions of which you've shown me.

4 Q. This is now a Brown and Williamson document;

5 right?

6 A. That is correct.

7 Q. It says, "Since January, as you know, the

8 situation -- under background. "As you know, the

9 situation in Minnesota has been uncommonly active. A

10 raft of legislative issues in the form of taxation,

11 regulation, and prohibitions have found their way

12 through the Minnesota legislative process." Do you

13 see that?

14 A. Yes, I do.

15 Q. Keep going down. I'm going to shift down.

16 A. Sorry.

17 Q. On the right-hand side -- I'm going to shift

18 down to here to where it says "The ink..."

19 A. Where it says -- I'm sorry?

20 Oh, "The ink..." I see. Yes.

21 Q. Then it says, "The ink was not yet dry on this

22 report before our lobbyists initiated an aggressive

23 and focused effort in communication with legislative

24 leadership and targeted key legislative activists.

25 This effort was successful in preventing a majority

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1 of the report from seeing its way from the drafting
2 board to a legislator's hand." Do you see that?

3 A. I do.

4 Q. So now that tells you that clearly these
5 lobbying efforts of the tobacco industry were having
6 an impact on what was going from the drafting board
7 to the legislator's hands?

8 MR. PURVIS: Object to the form.

9 THE WITNESS: That's what Mr. Michael Brozek
10 says.

11 BY MR. MANNING:

12 Q. Right. And, in fact, the way you interpret that
13 is things that would be prevented from getting to the
14 drafting board, to the legislator's hand, then
15 wouldn't find their way into a legislative hearing,
16 would they?

17 A. That is correct. Because it doesn't go through
18 the legislative drafting process, the revisor's
19 office, then it would not appear on the calendar of
20 either the House or the Senate. Yes, sir.

21 Q. So those things wouldn't be available to you in
22 your historical review, would they?

23 A. No, they would be. They'd be available if we
24 examined the -- as we have, the committee proceedings
25 that dealt with tobacco issues that -- committee

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1 proceedings would not have the legislative drafting
2 process yet. And it could -- it could have fallen
3 out somewhere along there in the proceedings. I'm
4 familiar with that, unfortunately, from firsthand
5 experience.

6 Q. Now --

7 A. May I modify that?

8 Not everything would go through the committee
9 structure.

10 Q. On --

11 A. So, therefore, it is possible that we missed
12 some of it, yes.

13 Q. Sure. Because not -- particularly as is talked
14 about here, things that were on the drafting board
15 may not -- that were changed, may not find their way
16 into the committee hearings?

17 A. That is possible. Yes, sir. I amend my answer
18 with that observation, sir.

19 Q. And it's clear that they were attempting to
20 impact the process as early as the drafting board?

21 A. According to Mr. Brozek, yes, sir.

22 Q. And then, if you turn, if you will, to page
23 nine.

24 A. Page nine?

25 Q. Nine. Yeah.

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1 A. Yes, sir.

2 Q. And it says there on page nine that "Every
3 possible legislative, political, social, and
4 theoretical angle is being utilized in our efforts to
5 get out of this session unscathed"; do you see that?

6 A. Yes, I do.

7 Q. "Since Minnesota has seen fit to designate
8 itself as Surgeon General Koop stated, 'A model for
9 the country" with regard to anti-smoking legislation,
10 our only choice in this matter is a complete
11 victory"; do you see that?

12 A. Yes, I do.

13 Q. "Anything less could be used against us in other
14 states"; right?

15 A. That's right.

16 Q. "We will employ all means to secure that
17 victory."

18 A. So the document states, yes.

19 Q. And that's from Michael Brozek to Michael
20 Mozingo?

21 A. Exactly.

22 Q. In April of '85?

23 A. Right.

24 Q. At least before today you were not aware of the
25 strength of the commitment of a complete victory in

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1 the legislative arena before you saw these documents?

2 A. I've never seen reference to complete victory.

3 (Exhibit 3150 marked for identification.)

4 BY MR. MANNING:

5 Q. Now, sir, showing you what's been marked as

6 Deposition Exhibit 3150, you see a 1988 Minnesota

7 Legislative Plan and a Minnesota 1987 Legislative

8 Overview; right?

9 A. That's correct.

10 Q. If you go down to the third paragraph, "Did we

11 have the best lobbying team?" Do you see that?

12 A. Yes, I do.

13 Q. It says, The drafter of this document" -- let's

14 find out who it is.

15 Woops. No name, huh?

16 A. No name.

17 Q. We don't know who drafted it?

18 A. Mr. Anonymous, then.

19 Q. Yeah.

20 A. Or Ms. Anonymous.

21 Q. Sure.

22 And it says, "My answer," Did we have the best

23 lobbying team? "My answer would have to be, without

24 equivocation, yes, absolutely. Our lobbying team,

25 consisting of Tom Kelm, Andrew Kozak, and David

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1 Horasdovsky, a firm known as North State Advisers,
2 Inc., are considered in almost every circle to be the
3 most effective and most respected lobbying team in
4 the state of Minnesota"; do you see that?

5 A. I do.

6 Q. Are you familiar with Mr. Kelm?

7 A. Yes, I am.

8 Q. Do you know him?

9 A. Yes, I do.

10 Q. Did he serve under Mr. Perpich?

11 A. No, he did not.

12 Q. Under who did he serve?

13 A. Under Governor Anderson.

14 Q. Did you know him when he was with

15 Governor Anderson?

16 A. Yes, I did.

17 Q. Did you work with him?

18 A. No, I did not.

19 Q. Did you work with him when he formed Northern

20 States Advisers?

21 A. No, I did not.

22 Q. Are you aware that he did so?

23 A. I'm aware that he had a lobbying,
24 public relations operation. That it was called
25 Northern State, I did not know.

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1 Q. And you were aware that he was one of the most
2 respected lobbyists?

3 A. I was aware that he had a good reputation as a
4 lobbyist, yes, sir. Whether it was the most
5 respected one I wouldn't know.

6 Q. Were you aware before today that he worked for
7 the tobacco industry?

8 A. I think I had some knowledge of that before
9 today, yes, sir.

10 Q. How did you know that?

11 A. I think through word of mouth, from around.
12 Different people. Friends like D.J. Leary, who is a
13 respected political observer on the Minnesota scene.

14 Let's put it -- through word of mouth. Let's
15 put it that way.

16 Q. So you know D.J.?

17 A. Pardon me?

18 Q. You know D.J. Leary?

19 A. I certainly do know D.J.

20 Q. You know Wy Spano?

21 A. Oh, Wy -- I'm on his doctoral committee, yes,
22 sir.

23 Q. Is he getting his doctorate now?

24 A. He's getting his doctorate in political science.

25 Q. Good for him.

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1 And you know a lot of political people in the
2 state of Minnesota by your appearing on Almanac,
3 et cetera; correct?

4 A. I would say I know a good number of them, yes.
5 I wouldn't say all, obviously.

6 Q. But you know a good number?

7 A. Yes. I worked with a good number, as well.

8 Q. Right. And you knew Tom Kelm was a lobbyist for
9 the tobacco industry?

10 A. Yes, I did.

11 Q. And you were involved in a historical analysis
12 for --

13 A. That is correct.

14 Q. -- the tobacco industry?

15 A. Not for the tobacco industry.

16 Q. Well, you knew that --

17 Let's talk, so we don't get hung up in things,
18 let's say when we come to that issue, sort of shorten
19 it and paraphrase and say we know the money went into
20 your pockets from the tobacco industry?

21 A. I was doing research on the awareness of the
22 people of Minnesota and the state regarding health
23 hazards of smoking.

24 Now the fact that the funds came from the
25 tobacco industry, is an incidental factor, yes, sir.

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1 Q. Incidental factor?

2 A. Incidental factor for me as a historian because
3 I was independent, free to do my research, without
4 interference or without any kind of oversight and
5 guidance by anyone.

6 Q. Right. And, of course, who the money came from
7 has absolutely no impact, I'm sure you will tell me
8 this, on broadening the question that you want to
9 research? It has no impact?

10 A. No impact whatsoever, sir.

11 Q. And --

12 A. I'm not a corporate historian, nor am I
13 interested in what the industry does, except in its
14 public presentation.

15 Q. But you could have easily, in your historic
16 analysis, called Tom Kelm, who you knew worked for
17 the tobacco industry, and asked him about what his
18 efforts and what his knowledge was on lobbying
19 efforts on behalf of the tobacco industry? You could
20 have easily done that?

21 A. Oh, I certainly could have.

22 Q. If you would have called him, he would have
23 returned your call?

24 A. He certainly would have.

25 Q. If you asked him to go to lunch, I'm sure he

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1 would have gone to lunch with you?

2 A. Most probably.

3 Q. You didn't do that?

4 A. No, I did not.

5 Q. This author goes on and says, after saying

6 they're the best, "Their access to legislative

7 offices is unparalleled"; do you see that?

8 A. I see that, yes, sir.

9 Q. "Their system of political influence is second

10 to none."

11 A. I see that.

12 Q. "As a matter of fact, our lobbyists have, in

13 their own firm, a registered political action

14 committee which contributes over fifty thousand

15 dollars annually to legislative races and

16 constitutional officer races"; do you see that?

17 A. I see that.

18 Q. Next page. Page two.

19 A. Page three? Page two?

20 Q. Page two. Second sentence.

21 A. Second sentence.

22 Q. "As a matter of fact, during the session regular

23 daily meetings were held in the Capitol rotunda at

24 2:00 p.m. for all tobacco family participants"; do

25 you see that?

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- 1 A. Yes, sir.
- 2 Q. You go down further there -- you see the
- 3 paragraph that says, "Finally, concerning our
- 4 lobbying efforts..."
- 5 A. Yes, I do see that paragraph.
- 6 Q. "...each lobbyist was assigned a specific
- 7 legislator, committee, administration agency head,"
- 8 right on down; right?
- 9 A. Yes, I see that.
- 10 Q. There was a bill there on smoking restrictions
- 11 slash schools?
- 12 A. I'm sorry?
- 13 Q. See House file 227?
- 14 A. House file number six --
- 15 Q. 227.
- 16 A. 227. Yes, sir. Smoking restrictions.
- 17 Q. Slash schools, right?
- 18 A. Pardon?
- 19 Q. Smoking restrictions slash schools?
- 20 A. Slash schools, yes, I see that.
- 21 Q. You don't know what position these lobbyists
- 22 took on that?
- 23 A. I have no idea.
- 24 Q. You didn't run across this in your historical
- 25 research?

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- 1 A. Nope.
- 2 Q. Next page. Please read that entire third page,
- 3 if you will.
- 4 A. Sorry?
- 5 Q. Please read the third whole page.
- 6 A. Whole third page?
- 7 Q. Yep.
- 8 A. Okay.
- 9 (Reviewing document.)
- 10 I have read it.
- 11 Q. Were you aware that in 1987 this type of
- 12 extensive efforts were being organized by the tobacco
- 13 industry?
- 14 A. Was I aware in terms of my own personal
- 15 knowledge of this?
- 16 Q. Yes, sir.
- 17 A. No, I was not aware of that. But it doesn't
- 18 surprise me.
- 19 Q. Did you become aware of this extensive efforts
- 20 going on by the tobacco industry during your
- 21 historical analysis?
- 22 A. No, I was not.
- 23 Q. So during your historical analysis you did not
- 24 know that they had a program in which four thousand
- 25 people were contacting their legislators?

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- 1 A. No, I did not.
- 2 Q. You didn't know that they had a targeted letter
- 3 writing campaign?
- 4 A. No, I did not. But it doesn't surprise me.
- 5 Q. You weren't aware that there was a specific
- 6 phone bank effort --
- 7 A. No.
- 8 Q. -- directed to convenience stores?
- 9 A. No, I did not know that. But, again, it doesn't
- 10 surprise me. These are typical and normal patterns
- 11 of lobbyists' behavior.
- 12 Q. On to page four, please.
- 13 A. Yes, sir.
- 14 Q. In the first paragraph, about -- down about five
- 15 lines, do you see the sentence that says, "Even
- 16 though we literally blanketed," do you see that?
- 17 A. I'm sorry.
- 18 Q. Even though --
- 19 A. Oh yeah, I've got it.
- 20 Q. Even though we literally blanketed the state of
- 21 Minnesota with industry generated, professionally
- 22 prepared, targeted and timed grass roots activity,
- 23 the missing factor was the human component"; do you
- 24 see that?
- 25 A. Yes, I do.

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1 Q. Going down further, the sentence about four up
2 from the bottom of that paragraph. "Our lobbyists
3 can only do -- "

4 A. I'm sorry. Oh, okay. Uh-huh.

5 Q. "Our lobbyists can only do so much. Our phone
6 bankers can only do so much. Our industry media
7 experts can only do so much, but when a legislator
8 has to say no to a friend, that legislator will think
9 twice about saying no."

10 A. Yes, I see that.

11 (Exhibit 3151 marked for identification.)

12 MR. MANNING: Before we begin, can I take a
13 two-minute break?

14 (Recess taken.)

15 BY MR. MANNING:

16 Q. Showing you, sir, what was marked as --
17 exhibit number again?

18 A. 3151.

19 Q. Thank you.

20 It's a thick document, right?

21 A. Very thick.

22 Q. Couple of inches, right?

23 A. At least.

24 Q. And the title of it is "Camel Y&R Orientation"?

25 A. "Camel Y&R Orientation," yes, sir.

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- 1 Q. If you turn to the next page?
- 2 A. Uh-huh.
- 3 Q. It's produced by RJR, right?
- 4 A. Uh-huh.
- 5 Q. In the Humphrey litigation, right?
- 6 A. Yes.
- 7 Q. Number one it says, "Strategic Importance of YAS
8 and Summary of YAS Learning"; right?
- 9 A. That's what it says, yes, sir.
- 10 Q. Number two is "Guidelines for Effective
11 Marketing to YAS"?
- 12 A. Yes, sir.
- 13 Q. Do you know what those are?
- 14 A. No, I do not.
- 15 Q. Is YAS young adult smokers?
- 16 A. Oh, okay. I'm not familiar with the acronyms of
17 the marketing, so if we come to acronyms, if you'd
18 spell it out for me, I'd appreciate that.
- 19 Q. You've seen the words "young adult smokers"?
- 20 A. Oh certainly. Certainly. But I have not before
21 seen the acronym YAS, Y-A-S.
- 22 Q. If you can turn back three pages.
- 23 A. (Complying.)
- 24 Q. It says, "Each year one million new adult
25 smokers enter the cigarette market"; right?

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- 1 A. Yes. That's what it says, yes.
- 2 Q. Number two, "YAS, or young adult smokers, are
- 3 the only source of replacement smokers"; right?
- 4 A. That's what it says, yes.
- 5 Q. " -- less than one-third of smokers start after
- 6 age eighteen"; do you see that?
- 7 A. That's what it says, yes.
- 8 Q. "Only 5% of smokers start after age
- 9 twenty-four"?
- 10 A. Yeah.
- 11 Q. Right?
- 12 A. What it says.
- 13 Q. So if you take those two statements together and
- 14 you're interested in selling as many cigarettes as
- 15 possible, and if only 5% start after twenty-four, and
- 16 less than one-third start after age eighteen, it
- 17 underscores the importance of getting the kids under
- 18 eighteen, doesn't it?
- 19 A. If I were selling cigarettes.
- 20 Q. Yes.
- 21 A. Yes.
- 22 Q. Right. And this is one of the early documents
- 23 in this two inch stack of documents under the title
- 24 "Younger Adult Smokers--Strategic Importance";
- 25 right?

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- 1 A. Yes.
- 2 Q. Now so far we don't have a date on this
- 3 document, do we?
- 4 A. No, we do not. At least I haven't seen one. I
- 5 see dates on the table below that, but no...
- 6 Q. So at least this one goes up to 1988, right?
- 7 A. That is correct. But no date when it was
- 8 generated, yes.
- 9 Q. Then under three it says, "First Usual Brand
- 10 Younger Adult Smokers," which we learned yesterday
- 11 was FUBYAS; right?
- 12 A. Yes.
- 13 Q. "...drive the growth of Marlboro and Newport."
- 14 A. Uh-huh.
- 15 Q. Number four, it says, "The value of FUBYAS
- 16 compounds over time due to extreme brand loyalty and
- 17 rate per day increases"; right?
- 18 A. That's what it says.
- 19 Q. "Of all smokers who chose Marlboro as a first
- 20 usual brand in the mid '70s, 41% still smoke the
- 21 brand."
- 22 A. That's what it says, yes.
- 23 Q. Would you thumb through this document, sir?
- 24 A. Oh, sure.
- 25 Q. Please. I'm sorry?

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1 A. I don't think I could gain very much by thumbing
2 through it. It looks like a very complex document.
3 But I shall thumb through it at your request.
4 Q. Now, for the second time, I'm going to ask you
5 to thumb through it a little quicker.
6 A. Okay.
7 Q. Go through it a little quicker. I'm not going
8 to ask any more questions about any pages.
9 A. Okay.
10 Q. Essentially it appears to be a complex, indepth,
11 marketing document, does it not?
12 A. Yes, sir.
13 I think I've seen part of it before. You showed
14 it to me yesterday, if I--
15 Q. You recall a similar document, in format?
16 A. No, I think I actually -- specific, exact same
17 pages. One page here, two very different examples of
18 successful brand strategies, "Jack Daniel's -- the
19 Marlboro of Bourbons," and "Budweiser -- turning a
20 big brand around." I've seen that.
21 Q. Yep.
22 A. You showed it to me.
23 Q. Right.
24 A. I just wanted to indicate to you that I've seen
25 at least part of it before.

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1 Q. Let me represent to you it's a different
2 document, but I understand what you're saying.
3 A. It looks like -- that page looks identical.
4 Q. Right.
5 A. Yeah.
6 Q. Okay. It's a complex marketing, indepth
7 document?
8 A. Absolutely. Yes. Exactly.
9 Q. And we talked about the first pages of it.
10 A. Uh-huh.
11 Q. Okay. Put it aside.
12 A. (Complying.)
13 Q. I'm going to show you Plaintiffs' Exhibit 1043.
14 Okay?
15 A. Uh-huh.
16 Q. Now here's a document, three pages, by Cliff
17 Pennell to Mr. R.M. Sanders?
18 A. From Cliff Pennell to Mr. R.M. Sanders, that's
19 correct.
20 Q. Dated February of 1989, right?
21 A. February 9, 1989, yes, sir.
22 Q. The re is "Camel Performance Opportunities"?
23 A. That's what it says.
24 Q. The first bullet point under "Current
25 Performance" --

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- 1 A. Uh-huh. Do you want me to read that?
- 2 Q. Just that first paragraph.
- 3 A. Okay. Surely.
- 4 (Reviewing document.)
- 5 Yes, sir, I've read it.
- 6 Q. If you go to the second page.
- 7 A. Second?
- 8 Q. Please.
- 9 A. Second bullet point?
- 10 Q. Second page?
- 11 A. Second page. Third bullet point down.
- 12 Q. Second sentence. "Both the 75th Birthday and
- 13 Smooth Character Campaigns have been confirmed as
- 14 being extremely impactful advertising among target
- 15 smokers. Obviously, perceptions cannot be changed
- 16 overnight, but Camel has moved a long way in this
- 17 area in a very short period of time."
- 18 A. Uh-huh.
- 19 Q. Do you see that?
- 20 A. I do.
- 21 Q. "Strategic Marketing Department has indicated
- 22 that in order to reach and convert younger adult
- 23 smokers, a brand must provide relevant
- 24 advertising/promotional activity that is presented in
- 25 a big and continuous manner with retail as the

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- 1 primary vehicle"; do you see that?
- 2 A. Yes, I do.
- 3 Q. Go over to the next page.
- 4 A. Sorry?
- 5 Q. Next page.
- 6 A. Next page?
- 7 Q. Read that whole paragraph there, "In
- 8 conclusion..."
- 9 A. Okay.
- 10 (Reviewing document.)
- 11 Yes, I've read that paragraph.
- 12 Q. Now you saw that very large marketing document
- 13 that we just went through previously?
- 14 A. Yes.
- 15 Q. The two-pager?
- 16 A. Yes, I saw the first few pages of that.
- 17 Q. And you thumbed through it and saw the
- 18 complexity and detail of analysis that was involved
- 19 in that document?
- 20 A. There's a lot of figures, yes, sir. Which I
- 21 haven't had a chance to really absorb.
- 22 Q. Right.
- 23 And that was a 1988 document, as far as we could
- 24 tell? At least the charts went up to '88?
- 25 A. At least the charts went up to '88. Could have

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- 1 been '89 document.
- 2 Q. Right. I understand.
- 3 And this is a February of '89 document, correct?
- 4 A. That is correct.
- 5 Q. Are you aware of when the character Joe Camel
- 6 was introduced by RJR?
- 7 A. No, I don't.
- 8 Q. No idea?
- 9 A. I know it's within the last decade. But I have
- 10 no idea -- it may be longer ago than that. But I
- 11 have no knowledge of the exact date when it was
- 12 introduced, no, sir.
- 13 Q. So as a matter of your historical research that
- 14 you did here, when you did look at advertising, as
- 15 you told us, --
- 16 A. Yes.
- 17 Q. -- you can't tell us when the Joe Camel
- 18 character was introduced by RJR?
- 19 A. No, I cannot.
- 20 Q. The last decade is the best you can do?
- 21 A. The best I can do.
- 22 Q. But you can see a strong interest by RJR through
- 23 Camel in the youth market?
- 24 A. Yes, I do.
- 25 Q. And that's apparent from these documents?

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1 A. That is correct.

2 Q. And it's apparent from the prior document I
3 showed you, the thick one, as well as the three-page
4 document?

5 A. That is correct.

6 (Exhibit 3153 marked for identification.)

7 BY MR. MANNING:

8 Q. Now you see a letter from Mrs. Jo F. Spach, the
9 Manager of Public Information, Public Relations
10 Department, to a Ms. Gayle Jorgens, at 4624 Ewing
11 Avenue South in Minneapolis, Minnesota?

12 A. Yes.

13 Q. Written on August 25, '89; right?

14 A. August 25, 1989, yes.

15 Q. Now, you know where Ewing Avenue -- Ewing Avenue
16 and 46th is, right?

17 A. I do know where 46th and Ewing is, yes.

18 Q. This letter starts here by Ms. Jo F. Spach,
19 "Thank you for your letter concerning our Camel
20 Smooth Character ad campaign. It is helpful to get
21 honest reactions from the public in order to better
22 evaluate our efforts."

23 Now in these prior documents I've shown, these
24 prior two, you've seen the Camel Smooth Character ad
25 campaign reference; right?

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1 A. I've seen some references to them, yes. I don't
2 know what they were, but I know -- what the campaigns
3 were, but I know ad references.

4 Q. You've seen them referenced, and the importance
5 of those campaigns in RJR's mind, to the young adult
6 smoker?

7 A. So the documents suggest, yes, sir.

8 Q. Right.

9 This goes on and says -- this letter by this RJR
10 woman, "We were disconcerted by your concerns. Our
11 intention with this campaign was one of
12 lightheartedness and we never intended to offend
13 anyone. We are sorry that our campaign has been
14 interpreted otherwise.

15 "The Tobacco Industry considers smoking to be a
16 custom for those adults who derive pleasure from it.
17 We believe that whether to smoke or not is a decision
18 that should be freely made by individuals who have
19 reached the age of mature judgment."

20 Do you take that to be eighteen?

21 A. Sorry?

22 Q. When she's talking -- who have reached the age
23 of mature judgment, do you take that to mean
24 eighteen?

25 A. I have no idea what they meant by mature

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1 judgment. Could be eighteen. Could be.

2 Q. Okay. "Accordingly, our advertising is directed
3 to all adult smokers and not younger people"; do you
4 see that?

5 A. I do.

6 MR. PURVIS: Bill, you inserted the word "all."
7 It's not there.

8 MR. MANNING: Thank you.

9 BY MR. MANNING:

10 Q. "Accordingly, our advertising is directed to
11 adult smokers and not younger people."

12 A. Yes.

13 Q. "Also, research shows that among all the factors
14 that might influence a young person to start smoking,
15 advertising is insignificant"?

16 A. That's what it says.

17 Q. "We have, of course, reviewed your opinions with
18 our advertising executives to make certain that they
19 and members of their staff are aware of your
20 comments"; do you see that?

21 A. Yes, I do.

22 Q. Based on the documents you've seen, you would
23 disagree, I take it, with this statement that she
24 makes, that the advertising is directed to adult
25 smokers and not younger people?

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1 A. I have no idea what advertising is directed
2 towards just from the basis of reading a few excerpts
3 from documents. And I'm not an advertising expert,
4 so sorry. On the basis of the few excerpts I read,
5 one would think that getting younger smokers is, of
6 course, an objective, yes, sir.

7 Q. An objective of the company?

8 A. Yes, sir.

9 Q. And one that they attempt to do through
10 advertising, as well as other promotional means?

11 A. Through whatever means possible, I think. Just
12 from the excerpts I've read.

13 Now this is obviously not a basic research --

14 Q. I understand.

15 A. -- endeavor I've undertaken, nor am I qualified
16 to talk about advertising, marketing, psychological
17 influence on youngsters, things of that nature. As
18 long as we understand that.

19 Q. Let's go to the next one.

20 (Exhibit 3154 marked for identification.)

21 BY MR. MANNING:

22 Q. Here's now a letter, second page by David
23 Fishel, Senior Vice President, Public Relations,
24 R.J. Reynolds. And he is copying this letter to
25 Council President Sharon Sayles Belton and others.

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1 And he sends it to Mayor Don Fraser; right?

2 A. Yes.

3 Q. You know Don?

4 A. I certainly do.

5 Q. You've known him for years?

6 A. I've known him for many, many years.

7 Q. You have deep respect for him?

8 A. Very.

9 Q. And can you read the first paragraph of that

10 letter?

11 A. Surely.

12 Q. I'll just -- I want you to read the context of

13 the whole thing.

14 A. Okay.

15 (Reviewing document.)

16 Shall I read the whole letter?

17 Q. First paragraph. Second paragraph.

18 A. Okay.

19 (Reviewing document.)

20 I've read both paragraphs.

21 Q. Now when they make the statement in the second

22 sentence, this RJR Public Relation Senior

23 Vice President, Dave Fishel, when he writes to

24 Mayor Fraser here in 1990 and says in that second

25 sentence, "We do not advertise or -- or wish to

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1 promote our products to anyone under the age of
2 eighteen," -- at least as to that second phrase, "or
3 wish to promote our products to anyone under the age
4 of eighteen," you have seen sufficient company RJR
5 documents in the time frame and the immediate ten
6 years prior to 1990, to let you conclude that that
7 statement, that they don't wish to promote their
8 products to anyone under the age of eighteen, is not
9 accurate; correct?

10 A. Again, on the basis of the partial documents
11 I've seen, without having any expert knowledge of
12 advertising, or any of the other disciplines involved
13 in marketing, et cetera, et cetera, my answer would
14 be yes.

15 Q. All right. And it says, "Nor do we have any
16 interest or engage in any activity designed to
17 encourage nonsmokers, regardless of age, to start
18 smoking"; again, that statement, based on the
19 documents that you've seen, that I've just shown you
20 in the last half hour from RJR, is not true, is it?

21 A. Post eighteen-year-old smokers? I have no --
22 are you talking about under eighteen-year-old
23 smokers?

24 Q. Correct.

25 A. Under eighteen-year-old smokers? Then, again,

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1 my answer would be the same as I gave before. With
2 the --
3 Q. With all the caveats?
4 A. With all the caveats, yes.
5 Q. With all the caveats, the statement is not true?
6 A. With all the caveats, yes.
7 Q. That statement that I just read to you in this
8 letter, "Nor do we encourage any interest or engage
9 in any activity designed to encourage nonsmokers,
10 regardless of age, to start smoking," --
11 A. I couldn't say regardless of age; in other
12 words, I don't know. I haven't got the evidence of
13 that. Even from the small -- stipend I was able to
14 see from the documents you gave me.
15 Post eighteen-year-olds -- I don't know what
16 they were -- you were showing me
17 pre-eighteen-year-olds and eighteen-year-olds.
18 Q. But at least as to pre-eighteen-year-olds, based
19 on your review of the documents, with all the
20 caveats, clearly they were trying to get
21 pre-eighteen-year-olds to start smoking?
22 A. Yes, sir.
23 Q. So that sentence, as to pre-eighteen-year-olds,
24 would not be true?
25 A. With all the caveats.

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1 Q. It would be untrue; correct?

2 A. Yes.

3 I'm not talking as an expert.

4 Q. I understand.

5 The next sentence there: "Our company's sole
6 focus is trying to convince current adult smokers
7 that our brands are more desirable than those of our
8 competitors."

9 Again, based on what you've seen in these
10 documents that I've shown you, that statement, "Our
11 company's sole focus is to try to convince adult
12 smokers to switch from one brand to another," it's
13 just not true, is it?

14 MR. PURVIS: Object to the form.

15 BY MR. MANNING:

16 Q. With all the caveats?

17 A. The word that you're focusing upon is sole, is
18 that it?

19 Q. Correct.

20 A. Then, again, with all the caveats, yes.

21 Q. Right. This guy who is the head of public
22 relations, is Vice President, evidently making a lot
23 of money, at least he's got the title of
24 vice president, writes to a mayor, who is a former
25 United States Congressman, and one of the most

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1 influential people in the world in foreign relations
2 over a period of time, and one of the most brilliant
3 men in this country, and while they have inches and
4 inches and probably stacks and feet and yards, and
5 who knows what else, but at least inches of documents
6 that you've seen, this man has the audacity to say to
7 Mayor Fraser in print, that their sole focus is to
8 get adults to switch from one brand to another;
9 correct?

10 MR. PURVIS: Object to the form.

11 THE WITNESS: That's what he says. I can't
12 evaluate what he says. But that's what he says.

13 BY MR. MANNING:

14 Q. Well, you can evaluate what he says in that
15 sentence, is in fact, as you've told me, in
16 contradiction of what you've seen in the last half
17 hour in the documents I've shown you?

18 A. With all the caveats previously expressed.

19 Q. Right. With all those caveats it's a
20 contradiction?

21 A. Seeming.

22 Q. This sentence, with all these documents --
23 seeming --

24 A. Yes.

25 Q. Seeming contradiction. Thank you.

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1 It goes on to say in the third paragraph there,
2 second sentence. "If you are an adult who currently
3 smokes," --

4 A. Sorry. Third paragraph.

5 Q. Third paragraph.

6 A. Oh yes, I've got it now.

7 Q. Keep in mind this man is talking to the mayor of
8 a major city, right? "If you are an adult who
9 currently smokes, we want your business. If you are
10 not, we don't." Meaning if you're a kid, we don't
11 want your business. Or if you're an adult who
12 doesn't smoke, we don't want your business; that's
13 what he's saying, isn't it?

14 A. That's what this says, yes.

15 Q. And we know, from looking at these documents
16 once again, that that sentence, with all the caveats,
17 is false; correct?

18 A. With all the caveats, and with the possible
19 existence of other documents and other evidence, yes.

20 Q. Yes, it's false?

21 A. Yes, it's false. Or seemingly false.

22 Q. I understand.

23 But this man goes on to emphasize his point in
24 the next sentence -- he doesn't end there. He
25 doesn't just say, "If you're an adult who currently

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1 smokes, we want your business. If you're not, we
2 don't." He goes on and says, "It's as simple as
3 that. And anyone who accuses us of acting otherwise
4 is either misinformed or intentionally
5 misrepresenting what we do." See?

6 A. That's what he says.

7 Q. This man tells the mayor that if the mayor
8 himself is making statements like that, that he, as
9 the mayor of Minneapolis, is making intentional
10 misrepresentations about this great company, RJR;
11 right?

12 A. You can so interpret it.

13 Q. Right.

14 And, in fact, what this man is doing, is -- is
15 sinister to this mayor, when this man, as a
16 representative of RJR, knows full well of the
17 existence of these documents and others, that they in
18 fact target kids; is that correct?

19 MR. PURVIS: Object --

20 BY MR. MANNING:

21 Q. Correct?

22 MR. PURVIS: Object to the form.

23 BY MR. MANNING:

24 Q. Correct?

25 A. I have no way of knowing whether that's correct

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1 or not. The fact is that there may be other
2 extenuating circumstances of which I am not aware.
3 The context of the document. Context of a letter.
4 Q. Let's go on then, second page of the letter,
5 first paragraph.
6 A. Second?
7 Q. Second page?
8 A. Second page. First paragraph.
9 Q. Now it just gets a little deeper.
10 A. Okay.
11 Q. "While many studies have indicated statistical
12 correlations between smoking and some diseases,
13 statistical associations cannot, by their very
14 nature, demonstrate cause and effect relationships";
15 do you see that?
16 A. I do see that.
17 Q. We have seen internal tobacco company documents
18 that disagree with that sentence, haven't we? We
19 have seen today internal company documents that say
20 epidemiological statistical data is conclusive proof
21 of cause and effect?
22 A. You've shown me such excerpts and such
23 documents, that's correct.
24 Q. It goes on, "In fact cigarettes have never been
25 shown to be the cause of any of the diseases

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1 statistically associated with smoking despite three
2 decades of intensive scientific research, including
3 thousands of laboratory studies that have tried to
4 cause these diseases in animals through the
5 inhalation of cigarette smoke"; do you see that?

6 A. I do.

7 Q. And we know that that sentence is a baldfaced
8 lie, isn't it?

9 MR. PURVIS: Object to the form.

10 BY MR. MANNING:

11 Q. And you know it?

12 A. And I think Mayor Fraser, also.

13 Q. Do you think Mayor Fraser knows?

14 A. Look, Mayor Fraser read the surgeon general's
15 report.

16 Q. An so you think a letter by this company that
17 attacks the mayor and tells the mayor that he and/or
18 others, such as the city council person, Mayor Sharon
19 Sayles Belton, or others, you think that he
20 immediately, when he reads this letter, concludes I'm
21 just -- I just know they're lying. He doesn't even
22 have to think about it, is that right?

23 A. I would think so.

24 Q. That's what you would think?

25 A. In other words, credibility is nil, or next to

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1 nil.

2 Q. So here in 1990, when they're making a statement
3 like that -- in fact, if Mayor Fraser is supposed to
4 immediately conclude that it's a lie, then you would
5 agree with me that, in fact, with the credibility
6 being next to nil, that this statement, by this man,
7 on this company's stationery is, in fact, a baldfaced
8 lie?

9 MR. PURVIS: Object to the form.

10 BY MR. MANNING:

11 Q. Correct?

12 A. With your interpretation, yes.

13 Q. Thank you.

14 (Exhibit 3155 marked for identification.)

15 BY MR. MANNING:

16 Q. Do you consider Mayor Fraser a friend?

17 A. Yes.

18 Q. Someone you have socialized with?

19 A. On and off over the years. Not recently,
20 though.

21 Q. Do you consider Arvonne a friend?

22 A. Yes.

23 Q. Do you socialize with her, as well?

24 A. Yes. I couldn't socialize with Don, without
25 socializing with Arvonne.

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1 Q. Have you told him you're testifying for the
2 tobacco industry?

3 A. It never came up.

4 Q. You never told him?

5 A. I haven't seen them actually in the last year
6 and a half, two years, in terms of social
7 engagements.

8 Q. Do you think you have a responsibility, as a
9 friend of his, to talk to your lawyers about the
10 protective order and ask them whether or not you can
11 call Mayor Fraser to tell him what you've seen?

12 A. I would not tell him, obviously. I've signed a
13 protective order.

14 Q. Do you think, as a matter of principle, and as a
15 friend, and as a person of high ethical standards and
16 morality, ask to -- your lawyers to talk with us
17 about your protective order so that you could at
18 least go to Mayor Fraser and tell him about the lies
19 that you've witnessed?

20 MR. PURVIS: Object to the form.

21 THE WITNESS: I'm sure that Mayor Fraser is
22 fully aware of the letter that he received from this
23 PR flack. And I'm sure he took it in the spirit in
24 which it was sent. I don't have to tell him about
25 that letter.

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1 BY MR. MANNING:

2 Q. Okay. Do you think the -- do you think it's
3 acceptable to send letters like that?

4 A. I have no idea. I'm not a medical strategist.

5 I don't know anything about public relations. I
6 don't know what is the morality and ethics of public
7 relations and, consequently, I cannot answer that
8 question.

9 Q. Do you think it is ever, ever acceptable in
10 life, at any time?

11 A. I'm talking about corporate -- corporate
12 activities.

13 Q. Listen to me. I want to make sure I understand
14 what your view of ethics is, so we understand each
15 other from a definitional standpoint.

16 Do you think it is ever acceptable, ever in
17 life, --

18 A. Uh-huh.

19 Q. -- because all corporations are made up of
20 individuals; right?

21 A. Yes, sir.

22 Q. There's not a thing such as the corporation,
23 other than the people --

24 A. Legal -- it's a legal thing.

25 Q. Right. Legal entity. But it's made up of

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1 people?

2 A. Uh-huh.

3 Q. People in the corporation speak; right?

4 A. That's correct.

5 Q. The corporation doesn't talk. People talk,
6 right?

7 A. I assume so.

8 Q. Do you think it is ever acceptable in our
9 society, for any person, under any conditions, to
10 lie?

11 MR. PURVIS: Object to the form.

12 THE WITNESS: I have no idea whether I would
13 make such a blanket statement. But I find it
14 unacceptable to lie, yes.

15 BY MR. MANNING:

16 Q. And when you become aware of lying because you
17 find it unacceptable, do you, as a professional, feel
18 a responsibility to speak against it?

19 MR. PURVIS: Object to the form.

20 THE WITNESS: As an individual, perhaps, yes.

21 BY MR. MANNING:

22 Q. And in this instance, at least, the lying that
23 you have just seen and witnessed, and acknowledged
24 under oath, you have no intention of speaking out
25 about it, do you?

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1 MR. PURVIS: Object to the form.

2 THE WITNESS: I have no full knowledge of all of
3 this.

4 You have asked me a question whether, on the
5 basis of the handful of documents, a few handful of
6 documents, excerpts of which I've seen, and the basis
7 of that letter, whether I thought the contradictions
8 in the documents and the letter were a lie. I said
9 they were seemingly that. All right?

10 BY MR. MANNING:

11 Q. All right.

12 A. I have to have more than that to get up on -- on
13 the podium and condemn an individual, an institution,
14 or a corporation.

15 Q. And at least you would agree with me, and I'm
16 going to show you a few more documents, and at the
17 end of showing you those documents I'm going to have
18 shown you forty-four documents, I'll represent to
19 you, --

20 A. Okay.

21 Q. -- that were on the list that I provided to your
22 lawyers.

23 A. Excerpts.

24 Q. That's right.

25 Forty-four documents.

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- 1 A. Yes.
- 2 Q. They showed you this list.
- 3 A. Yes.
- 4 Q. You didn't look at any documents last night?
- 5 A. Absolutely not. I had no knowledge what those
- 6 numbers meant.
- 7 Q. The first documents you saw were the ones I've
- 8 shown you?
- 9 A. That is correct.
- 10 Q. And at least you have clearly said that based on
- 11 the documents that I've shown you, in more than one
- 12 instance, there is a seeming -- at least seeming lie
- 13 occurring --
- 14 A. Let's call it contradiction.
- 15 Q. Okay. We can call it that.
- 16 A. Call it contradiction. A lie is a very strong
- 17 word.
- 18 Q. Yeah.
- 19 A. And I'm not sure I would go that far.
- 20 In fact, in my previous answers to you, may I
- 21 amend those to say contradictions?
- 22 Q. Let me just say this, sir.
- 23 A. Yes.
- 24 Q. That your previous answers stand. And you can
- 25 say anything you want now, to --

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1 A. Okay. At this point I would amend my previous
2 answers.

3 Q. I just want to tell you something.

4 A. Let them stand. But let the record also show
5 that in thinking over this question, and in thinking
6 over the line of questioning, I now want to amend
7 that, saying contradiction.

8 Thank you.

9 Q. But, in fact, sir, I've spoken to you over a
10 period of almost twelve hours for two days, --

11 A. Yes, sir.

12 Q. -- so there have been many times that I've asked
13 you about seeming lies and contradictions.

14 A. Always in a hypothetical or in a very general
15 kind of sense, with only limited evidence.

16 Q. And what I'm now asking you is a different
17 matter. Whether you characterize it now, here, as we
18 close, as a contradiction, however you want to
19 characterize it; okay?

20 A. Uh-huh.

21 Q. Let it -- I want to be clear. When you leave
22 here, based on the forty-four documents that you will
23 see, --

24 A. Sure.

25 Q. -- you have no intention of asking to see more

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1 documents to see for yourself whether or not the
2 seeming lie, the lie, the contradiction, however you
3 want to characterize it, at this time, you have no
4 intention of exploring further the depth or gravity
5 of that?

6 A. I have no intention of so doing. Yes, sir.

7 Q. Thank you.

8 And you feel that you ethically, as a professor
9 at the University of Minnesota, have absolutely no
10 duty or responsibility to do so?

11 A. Not in this particular instance, no, sir.

12 Q. You've got that document?

13 A. Yeah, I have this.

14 Q. Marked as what?

15 A. 3155.

16 Q. Now, looking at it, sir, this is a Brown and
17 Williamson document; right?

18 A. Yes. B&W.

19 Q. Yeah. From a Forsythe to a Sharp, right?

20 A. From A.G. Forsythe to R.D. Sharp, yes, sir.

21 Q. In '85, right?

22 A. In -- yes.

23 Q. Just please read the first page of the document,
24 if you will.

25 A. The entire document?

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- 1 Q. First page.
- 2 A. First page?
- 3 Q. The purpose and key issues.
- 4 A. All right. Purpose.
- 5 (Reviewing document.)
- 6 I have read the first page.
- 7 Q. Second page, please?
- 8 A. Second page?
- 9 Q. Please.
- 10 A. (Reviewing document.)
- 11 Q. Have you read halfway down, sir?
- 12 A. I've read most. One last line.
- 13 Q. Once again --
- 14 A. Yes.
- 15 Q. -- at least here we see another brand that is
- 16 interested in the young adult smoker; correct?
- 17 A. That's correct.
- 18 Q. Kool?
- 19 A. That's correct.
- 20 (Exhibit 3156 marked for identification.)
- 21 BY MR. MANNING:
- 22 Q. Now, sir, showing you what's been marked as
- 23 Plaintiffs' Exhibit 3156, this is from a Dana
- 24 Blackmar to Rick McReynolds; right?
- 25 A. That is correct.

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- 1 Q. The date is 2/7/74?
- 2 A. That's correct.
- 3 Q. And it says in the first paragraph, "I think the
4 French advertisement for Camel filters is a smash.
5 It would work equally well, if not better, for Camel
6 Regular. It's about as young as you can get and aims
7 right at the young adult smoker Camel needs to
8 attract"; do you see that?
- 9 A. I see that. Yes, sir.
- 10 Q. I can't tell what that author meant precisely by
11 "...as young as you can get"; does it --
- 12 A. I can't read his mind. No, sir.
- 13 Q. No. We just know we've seen other RJR documents
14 that go as low as twelve-years-old; right?
- 15 A. I've seen such documents. Yes, sir.
- 16 (Exhibit 3157 marked for identification.)
- 17 BY MR. MANNING:
- 18 Q. Showing you, sir, what's marked as 3157, this is
19 from an L.A. Pizer to R.A. Pittman, right?
- 20 A. From L.A. Pizer to R.A. Pittman, yes.
- 21 Q. It's a B&W document?
- 22 A. It is a B&W document, yes, sir.
- 23 Q. Titled, "Advertising History"; right?
- 24 A. That is correct.
- 25 Q. Then, sir, if you can just turn to page five of

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1 the document, if you will.

2 A. Page five. Yes, sir. I'm on page five.

3 Q. First paragraph of the summary it says, "In
4 summary, I feel that the history of the three brands
5 reviewed clearly shows that advertising has an
6 important role in the success or failure of a
7 cigarette brand. The ability to find and maintain a
8 strong advertising theme was clearly shown by
9 Marlboro and Winston. On the other hand, Viceroy has
10 shown to be unable to commit to one ongoing copy
11 platform"; do you see that?

12 A. Yes, I do.

13 Q. And we haven't read the whole document
14 together. It was titled an "Advertising History,"
15 but at least from that summary we can conclude that
16 this author in 1974 felt that advertising was
17 important in the success of cigarette brand?

18 A. That's what the paragraph that you read to me
19 indicates, yes, sir.

20 (Exhibit 3158 marked for identification.)

21 BY MR. MANNING:

22 Q. Here we now have a document that's April of '81,
23 right?

24 A. Yes.

25 Q. B&W from Stebbins to Veatch?

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1 A. From Stebbins to Veatch, yes, sir.

2 Q. Now, here she says -- or whoever says, P.W.

3 Stebbins, "Dick, I just received a call from a Betty
4 Carr of the Tobacco Road retail store in Houston,
5 Texas. Ms. Carr was complaining about the sampling
6 techniques Donley is using with BARCLAY"; do you see
7 that?

8 A. I do.

9 Q. "She indicates that for at least a week, people,
10 mainly teenagers, have been coming in to her and
11 other retail outlets in the downtown Houston area
12 with literally shopping bags full of BARCLAY. They
13 either want to sell the cigarettes to her or exchange
14 them for brands they smoke"; do you see that?

15 A. I do.

16 Q. "Ms. Carr feels this is detrimental to the
17 tobacco retailers in the area."

18 Let's just skip down to the last paragraph. She
19 says -- or the author says -- "Aren't the samplers
20 supposed to change locations?--i.e., from the
21 inner-city, to suburban shopping centers, et cetera?
22 One of Ms. Carr's biggest complaints is that
23 teenagers have been invading her store for a week or
24 more. Had it been for a day or so, we probably
25 wouldn't have heard from her."

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1 Do you see that?

2 A. I do.

3 Q. So it would appear at least from this memo so
4 far, that somebody is down in Houston handing out a
5 whole lot of samples?

6 A. That's what it appears to be, yes, sir.

7 Q. Handing them out free, right?

8 A. That's what it appears to be.

9 Q. An kids, teenagers, are coming in with shopping
10 bags full of these products?

11 A. That's what it states here, yes.

12 Q. And then, there's an interesting little PS on
13 the memo. "In June of '79, Stebbins says, just
14 confirming to Veatch what was occurring in Houston, I
15 personally walked four blocks in Dallas with a
16 business associate to change some airline
17 reservations. Our round trip from the hotel to
18 ticket office netted four cartons of ARCTIC LIGHTS
19 each. Not bad for a nonsmoker."

20 Again, Stebbins is acknowledging that he
21 personally, in walking four blocks in the Dallas
22 area, received quite a few samples free?

23 A. That's what he says, yes.

24 Q. That's a technique, as far as you know, of
25 distributing cigarettes to young people, to get them

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1 to start smoking?

2 MR. PURVIS: Object to the form.

3 THE WITNESS: I have no idea how widespread that
4 was, or is, or when it began, or anything like that,
5 no, sir, I do not. I knew that it existed.

6 BY MR. MANNING:

7 Q. You knew it existed?

8 A. Yes, sir.

9 Q. You knew it from your historical analysis?

10 A. I knew it from reading. In one source or
11 another I've come across it, yes, sir.

12 Q. You have seen it?

13 A. Yes, sir.

14 Q. Did you see it in your historical analysis?

15 A. I assume so.

16 Q. And you have no idea how widespread it is?

17 A. I have no idea.

18 Q. You didn't ask about it?

19 A. No.

20 Q. You don't know if it varies from one state to
21 another?

22 MR. PURVIS: Object to the form.

23 THE WITNESS: No.

24 BY MR. MANNING:

25 Q. You don't know how much money each tobacco

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1 company spends on samples and free cigarettes in an
2 attempt to get kids hooked?

3 MR. PURVIS: Object to the form.

4 THE WITNESS: No.

5 BY MR. MANNING:

6 Q. You don't know if it's primarily directed at
7 kids, or adults, or both, do you?

8 A. I have no idea.

9 (Exhibit 3159 marked for identification.)

10 BY MR. MANNING:

11 Q. This again is a B&W document, right?

12 A. On the top of it it says so, yes.

13 Q. Titled, "Product Movie Placement," right?

14 A. Yes, sir.

15 Q. The purpose is to review the corporate policy
16 involving movie placements?

17 A. Yes, sir.

18 Q. The purpose here is to review the corporate
19 policy regarding movie placements; right?

20 A. That's what it says in A, yes.

21 Q. Turn to page two, please.

22 A. Three?

23 Q. Two.

24 A. Yes, sir.

25 Q. Down in the last paragraph.

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- 1 A. Yes, sir.
- 2 Q. It says, "Product usage/association with a
3 specific star provides exposure and linkage with a
4 star's personality/character. Stars tend to set
5 trends; example, Disco Dancing with Saturday Night
6 Live"; right?
- 7 A. Saturday Night Fever.
- 8 Q. Saturday Night Fever, right?
- 9 A. Yes. I see that.
- 10 Q. Do you know who the star was in Saturday Night
11 Fever?
- 12 A. I have no idea.
- 13 Q. Turn to the next page, please.
- 14 A. (Complying.)
- 15 Q. Four bullet points down, under "Key Issues" it
16 says: "Association with a specific star's image can
17 enhance and build a brand's" --
- 18 A. I'm sorry, I can't --
- 19 Q. Four --
- 20 A. Oh, I'm sorry. I see it.
- 21 Okay.
- 22 Q. "Association with a specific star's image can
23 enhance/build a brand's personality, more so than
24 traditional media"; right?
- 25 A. That's what it says, right.

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1 Q. So it would appear that Brown and Williamson is
2 analyzing its product movie placement techniques in
3 this document; correct?

4 A. So it seems, yes, sir.

5 (Exhibit 3160 marked for identification.)

6 BY MR. MANNING:

7 Q. Here we have a document written by James F.
8 Ripslinger, Senior Vice President of Associated Film
9 Promotions. CC's James Coleman at Brown and
10 Williamson; right?

11 A. CC, yes.

12 Q. It says, "Dear Mr. Stallone" -- it's written to
13 Sylvester Stallone, right?

14 A. That is correct.

15 Q. Could you just read that letter, please?

16 A. Read it?

17 Q. Please.

18 A. Yes, sir.

19 (Reviewing document.)

20 I have completed reading this document.

21 Q. It would appear that Brown and Williamson is
22 going to pay Sylvester Stallone a sizeable amount of
23 money in order for him to smoke their cigarettes in
24 films that he's in; is that correct?

25 MR. PURVIS: Object to the form.

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1 THE WITNESS: The letter indicates that.

2 BY MR. MANNING:

3 Q. And you don't have any idea of these five films
4 that are mentioned, what the age targeted audience is
5 of the films, do you?

6 A. I have no way of knowing that.

7 Q. You don't know how many kids under eighteen come
8 to these films?

9 A. No, I have no way of knowing that, sir.

10 Q. You have no idea, for example, how many kids
11 will see -- have seen Rocky IV?

12 A. No knowledge about that.

13 Q. You have no idea whether this violates the
14 tobacco advertising code that --

15 A. I have no way of knowing that.

16 Q. -- the companies -- that Brown and Williamson
17 entered into specifically?

18 A. I have no way of knowing that, sir.

19 Q. Were you aware that they did this kind of thing
20 before today?

21 A. I think I had seen references to that one way or
22 another recently in the press.

23 Q. Recently in the press?

24 A. Recently, yes.

25 In fact, I think I've seen references to

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1 Mr. Stallone in the press on this particular issue.

2 Q. And do you think that's an ethical thing to do,
3 for the tobacco companies to do, to pay this kind of
4 money to movie stars?

5 A. I have no view of that, sir. I'm not familiar
6 with what the procedures are, what the methods are,
7 and what the ethics are in these kinds of things,
8 sir.

9 Q. No view of that at all?

10 A. No view of that, sir.

11 Q. Prior to this historical analysis, sir, you
12 never did any work whatsoever with respect to the
13 subject of tobacco; correct?

14 A. By work do you mean research?

15 Q. Any work at all.

16 A. Oh yes. I included tobacco and tobacco-related
17 issues in some of the courses I teach, particularly
18 Early American courses. The first part of the survey
19 deals extensively with tobacco as a crop, as a kind
20 of development tool for Colonial America, stuff like
21 that.

22 I dealt -- deal with tobacco and tobacco
23 questions in terms of -- of the development of
24 cigarette control in the Industrial Revolution and
25 its popularity as a -- as a consumer item in my 20th

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1 Century U.S. History class. In that sense I've
2 worked on the issue of tobacco in my classes. But in
3 terms of having done any research, the answer is no.
4 Q. So the only work that you've done that's been
5 tobacco-related is the teaching in the various
6 courses that you've generally just summarized?
7 A. That is correct.
8 Q. Do you have your report handy?
9 A. Pardon me?
10 Q. Do you have your report?
11 A. Yes.
12 Q. For example, on page three of your report --
13 A. Page three? Yes, sir.
14 Q. -- you say that you intend to testify regarding
15 the longstanding and widespread awareness of the
16 American public, including the awareness of the
17 citizens of Minnesota, on and on; who you're talking
18 about there are individual Minnesota citizens?
19 A. I'm talking about generic Minnesota citizens.
20 Q. Made up of individuals? You're not talking
21 about the Governor?
22 A. Oh no, no, no. I'm talking about the whole
23 climate of opinion within the context of the
24 Minnesota citizen, yes.
25 Q. Uh-huh.

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- 1 A. In terms of individuals, no.
- 2 Q. You're not talking about individuals?
- 3 A. No, sir.
- 4 Q. You're talking about --
- 5 A. Except when we deal with individuals who are
- 6 activists, one way or another, on this particular
- 7 issue and play a significant role in either raising
- 8 awareness or not raising awareness.
- 9 Q. So what you're talking about is the climate?
- 10 A. And awareness, yes, sir.
- 11 Q. Climate and awareness of the citizens of
- 12 Minnesota?
- 13 A. Exactly.
- 14 Q. But not individuals?
- 15 A. Exactly. Exactly.
- 16 Q. So how do you talk about the citizens of
- 17 Minnesota, if you're not talking about individual
- 18 Minnesotans?
- 19 A. Well, historians do that all the time, sir.
- 20 Q. That's what I want to understand.
- 21 A. Historians do that all the time. We have to
- 22 make generalizations based on preponderance of
- 23 evidence dealing with a people and a society.
- 24 Q. Uh-huh.
- 25 You go on, on page four of your report, and you

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1 say, I -- end of that first paragraph, "I will
2 specifically discuss the State of Minnesota's
3 longstanding awareness..."

4 A. Yes.

5 Q. Who is the State of Minnesota?

6 A. State of Minnesota -- what I'm referring to, are
7 the state institutions, governmental bodies, agencies
8 within the state.

9 Q. So there you are not referring to Minnesota
10 citizens?

11 A. No, sir.

12 Q. So when you refer to the state of Minnesota's
13 longstanding awareness, you are referring there to
14 government?

15 A. Governmental agencies of various kinds. Yes,
16 sir.

17 Q. Are there specific ones you're referring to?

18 A. Yes. The legislative branch.

19 Q. Okay.

20 A. The executive branch. And the executive branch
21 would be, of course, the various state agencies that
22 played a significant role in tobacco health-related
23 issues, such as the Minnesota State Department of
24 Health, the Minnesota Department of Education, and
25 similar such institutions.

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1 Q. Going on in the next paragraph, when you speak
2 there about the State of Minnesota. You testify
3 about the State of Minnesota action and inaction,
4 particularly while the state was aware of the health
5 risks. What do you mean there when you're talking
6 about the State?

7 A. I'm sorry?

8 Q. What do you mean there when you're talking about
9 the State?

10 A. I'm talking about the State's public policy
11 actions.

12 Q. So there you're not talking about one, per se,
13 portion of government. They're you're talking about
14 the state's public policy actions?

15 A. Which includes legislative enactments signed
16 into law by the Governor; therefore, it's involvement
17 of the two different branches of government and
18 possibly even the judiciary, if it's challenged. I
19 don't know of anything that was challenged
20 specifically, but it could be.

21 Q. So at least in the first few questions here,
22 where we've talked about the State, on page three
23 you've told me that the State is the citizens of
24 Minnesota?

25 A. No, I didn't say that. I said -- we talked

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1 about the citizens of Minnesota in one category and
2 the state in another category.

3 Q. Fine. At least here --

4 A. They are interrelated, certainly. I mean
5 obviously.

6 Q. On pages three and four, though, when you were
7 speaking about the citizens of the State, --

8 A. Yes.

9 Q. -- you're talking about the general citizens,
10 not individuals, per se?

11 A. Exactly.

12 Q. Then, when we go to page four, there are times
13 when you're talking about -- when you use the State
14 of Minnesota, you're talking about the legislative
15 branch and the executive branch and its departments?

16 A. Right.

17 Q. There are other times when you're talking about
18 the state of Minnesota, you're talking about the
19 State's public policy?

20 A. Which includes actions of the legislative branch
21 and executive branch, obviously. They're not
22 unrelated.

23 Q. I understand.

24 A. Okay.

25 Q. For me to understand exactly what you're

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1 referring to in your report, when you refer to the
2 state, the state of Minnesota, the citizens of
3 Minnesota, various things that you use to
4 describe, -- we would need to go through, when you
5 talk about Minnesotans' knowledge, we need to go
6 through and define that each time to understand this
7 report, don't we?

8 A. Not necessarily. I think it's -- any historian
9 or knowledgeable person would know exactly what I'm
10 talking about in reading that report.

11 Q. You don't define those terms anywhere in this
12 report?

13 A. Not in this report, no, sir.

14 Q. In the forty-seven pages those terms are not
15 defined anywhere?

16 A. I think anyone with a decent education and
17 knowledge would know what I'm talking about when I'm
18 talking about Minnesotans in the state of Minnesota.

19 Q. Are there any other typos other than the one
20 we've found on page four?

21 A. I haven't found any other, but I haven't
22 looked.

23 Oh yes, I think I saw Phyllis Kahn's name was
24 spelled with one L instead of two. And I --
25 unforgivable.

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- 1 Q. Now your lawyer brought some published articles
2 that you did. Did you see these, that they brought
3 and gave to me?
- 4 A. I haven't seen what they've found. But I'm
5 familiar with the articles, of course.
- 6 Q. One of them is "Defeat of Unions Accompanied
7 Economic Decline For Most"?
- 8 A. That's part of the series I did for St. Paul
9 Pioneer Press, if I am not mistaken.
- 10 Q. This?
- 11 A. Yes.
- 12 Q. One title. Another title, "Political
13 Anti-Semitism in Minnesota During the Great
14 Depression"?
- 15 A. Yes, "Journal of Jewish Social Studies," yes,
16 sir.
- 17 Q. Another is "Essays on Jewish Lives and Thought"?
- 18 A. No. That is a chapter in that book.
19 If you'll turn the page.
- 20 Q. Did you write that?
- 21 A. Yes. That -- this "Cloakmakers Strike of 1910."
22 Q. That was written in 1959?
- 23 A. That's correct.
- 24 Q. This one, "Political Anti-Semitism in
25 Minnesota"?

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- 1 A. '76.
- 2 Q. When?
- 3 A. '76.
- 4 Q. This?
- 5 A. '90s. '93.
- 6 Q. '92?
- 7 A. '92.
- 8 Q. When's the last time you were published?
- 9 A. Just last March.
- 10 Q. On what?
- 11 A. It was a book review with the Journal of
- 12 American History.
- 13 Q. What was that on?
- 14 A. It was on a book written by Eva Morawska on a
- 15 small -- Johnstown, Pennsylvania, and some ethnic
- 16 community there.
- 17 Q. And there's something you wrote called
- 18 "They Chose Minnesota"?
- 19 A. No. It's a chapter in that ethic collection of
- 20 Minnesota Historical Society. Which -- "Jews in
- 21 Minnesota."
- 22 Q. Written when?
- 23 A. That was in '82 or '83. Somewhere in that...
- 24 Q. Then there's one book titled "Education for Work
- 25 and Labor Solidarity: Immigrant Miners and

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1 Radicalism on the Mesabi Range"?

2 A. That's correct.

3 Q. What's the year of that publication?

4 A. That was done as part of a Ford Foundation
5 project in the late '60s.

6 There will be another article coming out at the
7 end of this month, or next month, on a short history
8 of business in Minnesota, in the Minnesota Business
9 Catalog.

10 Q. What's that about?

11 A. If you wish a copy of that, I'd be happy to send
12 you one.

13 Q. What's it about?

14 A. Survey of the development of business enterprise
15 in Minnesota from fur trade to the present. It's
16 really a very general survey. Done as an
17 introduction to the business catalog.

18 MR. MANNING: Okay. Thank you very much, sir.

19 MR. PURVIS: Thank you.

20 THE WITNESS: Thank you.

21 (Concluded at 3:56 p.m.)

22 ***

23

24

25

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1

2

3

C E R T I F I C A T E

4

STATE OF MINNESOTA }

5

}

COUNTY OF GOODHUE }

6

I hereby certify that I reported the
deposition of DR. HYMAN BERMAN, on the 16th day of
September, 1997, in Minneapolis, Minnesota, and that
the witness was, by me, first duly sworn to tell the
truth;

9

That the testimony was transcribed by me
and is a true record of the testimony of the witness;

That I am not a relative, or employee, or
attorney, or counsel, of any of the parties; or a
relative or employee of such attorney or counsel;

That I am not financially interested in the
action and have no contract with the parties,
attorneys, or persons with an interest in the action
that affects or has a substantial tendency to affect
my impartiality;

That the right to read and sign the
deposition by the witness was reserved.

17

WITNESS MY HAND AND SEAL this 22nd day of
September, 1997.

19

20

Janet D. Winberg, RPR
Notary Public, Goodhue County, MN
My Commission expires 1/31/2000.

22

{Seal}

23

24

25

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